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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

October Term, 1955
No. 510

GUS O. BROWN and OSCAR CASTRO, individually and as Business Agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorported association; ERNEST MARSH and HENRY B. HOLMES, individually and as organizers of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; KRUGER CLARK, LAWRENCE TURNER, JACOB LEHMAN, SOL STEINHARDT, DAN QUIJARDA, PETER BEEKES, LOUISA TOCCI, MARK ROBINSON, JOE N. OLIVER, and ROBERT BURRI, individually and as officers and agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association, FURNITURE WORKERS, UPHOLSTERERS AND WOOD WORKERS UNION, Local 576 (INDEPENDENT), a voluntary unincorporated association; LOUIS COTA, JR., individually and as President thereof; GUILLERMO NAVARROS, individually and as Financial Secretary thereof; HENRY MOBLEY, individually and as Treasurer thereof,

Petitioners,

vs.

MORRIS PIZER, individually and as International President, and WILLIAM GILBERT, individually and as International Representative of and Members and representatives of the members of the United Furniture Workers of America, a voluntary unincorporated association, ALEX O. RIVERA, FRANK JONES, GEORGE B. TRIPP, FRANCES CARR, CHRIS LAGUTARIS, and ETHEL KIGGINS, individually and as members of and representatives of the members of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association,

Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Two.

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Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Two.

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal for the State of California, Second Appellate District, entered in the above entitled case on May 31, 1955, rehearing

denied on June 16, 1955, hearing in the Supreme Court of the State of California denied on July 27, 1955. (Appendix C.) On October 21, 1955, Mr. Justice Douglas made an order extending petitioner's time to file their petition for writ of certiorari and record on appeal to and including November 9, 1955.

Citation to Opinion Below.

The only written opinion in this case was rendered by the District Court of Appeal. It is reported at 133 A. C. 470 and is printed as Appendix B to this petition.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

Constitutional Provisions and Statutes Involved.

The provisions of the United States Constitution involved are Article I, Sections 9 and 10 (obligation of contract and bill of attainder), Article VI (federal supremacy), Amendment XIV (due process and equal protection). They are printed in Appendix A, page 1.

The federal statutory provisions involved are the Labor Management Relations Act, 29 U. S. C., Sections 157, 159(a), (b), (f), (g) and (h). They are printed in Appendix A, pages 2-6.

Questions Presented.

Under the contractual relationship between a local labor union and the International union with which the local was affiliated, the International was obligated to assist the local in its functioning as a labor union. The International secretly embarked upon a program designed and

calculated to deprive the local of all of its members, collective bargaining agreements and other assets and thereby to destroy the local. The local, after protesting to no avail the breach of contract, declared that its contract with the International had been terminated and that it would thereafter function as an independent local. The International commenced proceedings for the purpose of enforcing a forfeiture clause, in the agreement between the parties, applicable upon a local disaffiliating from the International. The California District Court of Appeal held that because the local was allegedly under "Communistic leadership" the International, despite its own prior breach of contract, was entitled to enforce the forfeiture clause. The questions presented are:

(1) Whether the decision below by denying to petitioners the right to treat a contract as at an end after repudiation and breach by the respondents, and directing the transference of petitioners' properties, rights and assets to respondent, constitutes State action depriving petitioners of their liberty and property without due process of law, contrary to the Fourteenth Amendment.

(2) Whether the decision below, by reason of the fact that it denies to all trade unions allegedly under "Communist influence" or "Communist leadership" the right to treat contracts as at an end after repudiation and breach by other parties to the agreement, creates an arbitrary classification and denies to petitioners the equal protection of the laws contrary to the equal protection provisions of the Fourteenth Amendment.

(3) Whether in accordance with an asserted public policy derived from federal and state statutes, the decision below, by delegating power to an international union

to confiscate the property of a local union under the forfeiture clause of an agreement previously repudiated by said international, whenever the officers of the said international union deem the local union to be under "Communist influence" deprives petitioners of their liberty and property without due process of law and violates the provisions of the supremacy clause of the Constitution, Article VI.

(4) Whether the decision below, by asserting a public policy derived from state and federal statutes which deprives petitioners of the right to treat a contract at an end when repudiated and breached and deprives petitioners of the right to assert such breach and repudiation as a defense to a suit by the wrongdoer seeking the forfeiture of petitioner's properties under such agreement, constitutes a violation of the provisions of Article I, Section 10 of the Constitution, forbidding the impairment of the obligation of contracts by laws, as construed and applied.

(5) Whether the decision below, by asserting a public policy derived from state and federal statutes that members or officers of a trade union who are allegedly Communists are guilty of criminal activities concerning which they have had no trial, and as a result of which both the officers and the trade union may be arbitrarily stripped of all legal and property rights, violates the provisions of Article I, Sections 9 and 10 of the Constitution forbidding bills of attainder.

(6) Whether the decision below, by depriving petitioners of contract and property rights solely because of alleged "Communist influence" or "Communist leadership," without proof of personal wrongdoing, abridges petitioners' rights to freedom of speech, press and assem-

bly in violation of the provisions of the First Amendment as embodied in the due process clause of the Fourteenth Amendment.

(7) Whether the decision below establishing a rule of law that a qualified and certified union under the Labor-Management Relations Act of 1947 can be deprived of its right to contract or to enforce collective bargaining agreements because it is allegedly under "Communist influence," violates the supremacy clause of the Constitution, Article VI, by purporting to regulate labor relations in a field preempted by Congress.

Statement of the Case.

The action herein was commenced on behalf of United Furniture Workers of America, a national labor union affiliated with the CIO (hereinafter referred to as the International). In 1938 the International issued a charter for the Los Angeles area to Local Union 576 (hereinafter referred to as 576 CIO). Said local was thereafter given jurisdiction to represent and organize under the charter given it by the International *all* furniture workers in Los Angeles and vicinity. In the charter issued by the International to 576 CIO, the International agreed: "To promote and assist the said union in the exercise of all the rights and privileges secured hereunder." [Ex. 1, Art. XXXVIII; Rep. Tr. 1467-85.]

The constitution of the International provided that the charter of a local might be revoked for cause upon charges, notice, and a hearing. In June of 1950, without the filing of any charges, without notice and without any hearing, the International embarked on a campaign to completely destroy 576 CIO by means of divesting it of

all of its membership, contracts and income.[1] Over a period of about four months while this attack continued, the local repeatedly protested to the International and requested information as to whether the International recognized its right to continue to exist at all as one of the International locals. The International ignored all of these protests and requests for information. Finally, 576 CIO advised the International that unless it discontinued its efforts to destroy the local or at the very least replied to the local's protests and inquiries, the local would be forced to consider that its charter had been wrongfully revoked and that it was independent of the International. The International again failed to reply. The local proceeded to function as an independent and the International then commenced these proceedings upon the theory that the local had breached its obligations to the International by disaffiliating therefrom, thereby entitling the International under its constitution to possession of all of the property of the local. [Ex. 1, Arts. XXVII and XXXIX.] The position of 576 CIO was that the International by its campaign to destroy 576 CIO had breached its agreement to give assistance to the local and that by reason of said breach all of the local's obligations to the International had been terminated under the established law of the state. The rulings of the courts below were adverse to the petitioning local union. These adverse rulings were bottomed on the view that the International despite its breach of the contract had the right to enforce the forfeiture pro-

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[1]As will be more specifically noted, *infra*, this campaign had as *one* aspect the granting of a charter to a new local giving it the same jurisdiction as 576 CIO. The campaign in its entirety, however, was directed at the complete elimination of 576 CIO as a functioning local.

vision of the agreement because of the alleged "Communist influence" within 576 CIO.

The respondents conceded that the alleged Communist activities of the local did not constitute any breach of the local's obligations to the International. Except for its disaffiliation from the International, which occurred after and as a consequence of the International's attempt to destroy 576 CIO, there is no claim that the local violated any of its obligations to the International. Thus the respondents conceded in the trial court that except for such disaffiliation "there was no breach by the officers of 576 upon which action could be brought under the constitution. There is nothing in the constitution of the international union or any of its rules or by-laws which says that the officers of any particular local cannot have political opinions or beliefs which are different from those of the International president or the majority of the international union. We do not claim that because some of the officers of local 576 may have disagreed on questions of policy with the international union, that the international union would then have the right to expel those officers from the international union or to revoke its charter. That is not our position." [Rep. Tr. 1306-8.]

When in June of 1950 respondent Pizer, the president of the International was urged to take action against 576 CIO, on assertions that it was communistic, he replied that he would like to do this but that he could not, that he had no authority under the International constitution, "because locals have autonomy"; "but if they could show him how it could be done that he would do it." [Rep. Tr. 901-21, 1160-2, 1170-80.]

The reasons for the failure of the International to file any charges against the local or to give it a hearing thus

becomes apparent. However, the International president was either shown, or discovered, a way to accomplish his objective. In June of 1950 respondent Pizer secretly hired two members of 576 CIO for the purpose of taking over the local. [Rep. Tr. 1160-2, 1043-4.] A campaign of open warfare financed and directed by the International was then begun. 576 CIO and its leadership were violently attacked in speeches and in a flood of leaflets and various types of printed material. A new local, 1010, with the identical jurisdiction previously granted 576 CIO was set up by the International. All of the members of 576 CIO were urged to leave that local and join 1010. Demand was made that the employers cease bargaining collectively with 576 CIO, breach and refuse to function under existing contracts with 576 CIO and refuse to forward to 576 CIO dues checked off under valid existing collective bargaining agreements with that local. [Rep. Tr. 1004-10, 1105-7, 972-7, 1142-4, 921-6; Ex. P, Rep. Tr. 1772, 1001-4, 1152-5, 1777-8, 1771, 1171; Ex. R-2, Rep. Tr. 1557-63, 1778-1837; Exs. R-37, BB; Rep. Tr. 455-64; Exs. R-3, II; Rep. Tr. 1401-4, 1406-10, 1621-5, 2234-5; Ex. R-3, Rep. Tr. 964-5, 464-70, 1810-13.]

This campaign, secretly financed and directed by the International openly stated that as a result of the campaign 576 CIO "is doomed in the end" [Ex. R-2], bragging, on August 14, 1951, that as a result of the campaign "Local 576 is now a splintered group incapable of negotiating effectively" [Ex. R-3], and, a few days later that Local 1010 "has conquered the center of the furniture industry in Los Angeles. The rest of the industry can be expected to fall swiftly before the powerful assault of the swelling ranks of 1010 CIO members—and the crumbling Brown machine (referring to 576 CIO) will be brushed

aside." [Ex. R-4, Rep. Tr. 964-5.] Protests and inquiries with respect to the International's course of conduct were communicated to it from 576 CIO on July 12, 1950 [Ex. 61], July 18, 1950 [Ex. V], July 20, 1950 [Ex. W], July 25, 1950 [Ex. X], July 26, 1950 [Ex. T, Rep. Tr. 1505-10], August 11, 1950 [Ex. Y, Rep. Tr. 1544-6], August 15, 1950 [Ex. BB, Rep. Tr. 1494] and August 17, 1950 [Ex. 2]. No reply at all having been received from the International, the attorneys for the local on August 28, 1950, wrote to the International summarizing the facts relating to the International's campaign against 576 CIO. The letter stated that it was the intention of the local to protect itself from destruction but that before any action was taken by the local it desired "to ascertain whether you (the president of the International) or the general executive board or any other authority of the International union have determined whether local 576 CIO is to retain any jurisdiction." Mr. Pizer was asked to advise the local as to what jurisdiction and powers it had, if any. The letter concluded, "We request an answer to this letter within five days. Failing to hear from you within that time, Local 576 will assume that the International has revoked its charter and severed all relations between the International union and Local 576." [Ex. AA.] The request for an answer was ignored.

On August 16, 1950, a group of 576 CIO shop stewards had met and established a new local—Furniture Workers, Upholsterers and Wood Workers Union, Local 576, Independent. The Independent was established "for the purpose of protecting the contract and wage gains of the Local 576 membership, and with the further provision that if the International union would stop raiding and

attacking Local 576, the independent union would be disbanded." [Rep. Tr. 676-7.] The activities of 576 Independent were known to and approved by the officers of 576 CIO, which officers stated that the formation of the Independent was the proper step "but that we should not make it final and conclusive; that in my (petitioner Brown's) opinion we should make every effort to remain in the International union, and we should, however, take steps to protect the interests of the membership and the union if the International continues to attempt to destroy the local union." [Rep. Tr. 557-90.]

576 CIO also took steps to place itself in a position to meet the attacks of the International. At a meeting held on August 22, 1951, a resolution was adopted for the payment of $5,000.00 attorneys' fees to the union's attorneys "to protect the interests of our union." This was done after petitioner Brown discussed the attacks upon the union and stated that the International in effect had revoked the charter of the local by its attacks on the local; that the local had to see to it that it secured the legal services that it needed; that the International had unlimited resources; that it might tie up the local's funds and the local had to make some provisions to continue to operate. At the same time and for the same reason 576 CIO arranged for the payment of advance salaries to staff and representatives of the local. [Rep. Tr. 793-804.]

The first step taken by 576 CIO to actually disaffiliate from the International and to affiliate with the newly formed Independent was taken on August 28, 1950, through a resolution which referred to the organization of Local 1010 and its direction and operation by the International with the intention of achieving the destruction of 576 CIO; it noted that the officers and attorneys

of 576 CIO had repeatedly asked for clarification of the relationship between the International and the local and that no response had been received; that this action had placed 576 CIO and its membership and property in danger and constituted an effective revocation of the local's charter by the International without following the provisions of the constitution of the International and that it had "rendered Local 576 free and independent of the United Furniture Workers of America and without obligation to it under such constitution or otherwise." The officers of 576 CIO were directed by the resolution to effect a merger with the Independent which had been formed by the shop stewards on August 16, 1951. [Ex. FF, Rep. Tr. 664-7.]

This resolution was adopted only tentatively in order to give the International an opportunity to cease its attacks upon the local. A special meeting was scheduled for September 7, 1950, in order to allow further time for answer to the inquiries which had been directed to the International with final action one way or the other to be taken at said September 7 meeting in the light of what the International did or did not do. The withdrawal of the Local 1010 charter was *not* made a condition of the setting aside of the resolution of disaffiliation. [Rep. Tr. 650-2, 659-61, 670-2, 724-8, 736-7.]

On September 7, 1950, the International having done nothing to remedy the situation and in fact having failed to reply to any of the communications of the local, the resolution was finally adopted and the disaffiliation became effective. [Rep. Tr. 638-42, 646, 668-9, 733-5, 740.]

The above facts stand in the record uncontradicted and undenied.

That the claim of "Communist influence" was without foundation in point of fact is evident from the record. In 1949 the International was threatened with expulsion from the CIO because it was allegedly following the Communist Party line. Initially the International and 576 CIO while denying the allegations against them, took the position that the union's policy was determined by the democratic action of its membership and that it would not tolerate interference by the CIO with its autonomy. [Exs. 6, 7 and 8; Ex. 5 for identification, pp. 17, 18 and 43.][2] At the June, 1950, convention of the International this position was reversed by a large majority vote, with 576 CIO supporting the minority view. At the convention the minority locals were assured that they would be given full freedom to state their views and that their autonomy as guaranteed in the preamble of the International constitution [Ex. 1] establishing "a policy of rank and file control," would be respected. [Exs. 11, 12 and 15; Ex. 5 for identification, pp. 16-17.]

The only evidence allegedly relating to claimed Communist activity on the part of 576 CIO pertained to the period of time prior to the International's aforesaid change of policy. This evidence which fell far short of establishing that the local was in fact subject to Communist influence consisted of the following items:

1. In 1948 an assistant business agent without any union authorization or support solicited certain employees to subscribe to the *People's World*, stated

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[2]Exhibit 5 for identification is a complete copy of the convention of proceedings of the International for 1950; Exhibits 6, 7 and 8 and other exhibits hereinafter referred to are marked portions of Exhibit 5 for identification, which marked portions were admitted into evidence.

by the respondents to be the official West Coast newspaper of the Communist Party. [Rep. Tr. 138-9.]

2. At a shop meeting in 1949 the petitioner Brown who was the business agent and a leading figure in 576 CIO was asked whether he was a Communist and he replied, "Are you a member of the Dies Committee?" [Rep. Tr. 81.]

3. As noted above the local at the June, 1950, convention opposed, as a violation of the International's autonomy, the CIO declaration charging the International with following the Communist Party line.

This evidence was held sufficient to establish that the local was in fact under Communist influence. On the other hand, the evidence shows also that the official position of the local with respect to meeting all non-Communist provisions of the law is clear. On September 6, 1949, shortly after the International union had complied with the non-Communist affidavit of the Taft-Hartley law, 576 CIO complied and its officers signed such affidavits. [Rep. Tr. 359-360, 430.][8]

There is absolutely no evidence whatsoever that after the June, 1950, resolution the local was subject to Communist influence. It is true that the local did state its continued opposition to the decision reached at the 1950 convention of the International. However, this was done pursuant to the statements made by the International officers at the convention that the locals were free to do so and had the right to try to induce the International

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[8]The local could not comply under the law until after the International had done so.

to readopt its previous policy of opposition to interference in the International's determination of policy by its own membership. Evidence was also introduced concerning a coordinating committee which later became known as the United Labor Action Committee, consisting of a loose, informal group of representatives of various unions in which all unions were eligible to participate. 576 CIO was not a member of the committee but joined with it in certain actions. There was nothing in those activities of that committee in which 576 CIO joined which indicated any following of the Communist Party line. [Rep. Tr. 744-51.]

Even assuming that the local had engaged in conduct on the basis of which the International was entitled to take punitive action against it, the record is clear that there were never any charges filed against the local nor was there any notice or hearing given to the local before the action to destroy it was taken.

The trial court made specific findings that the issuance of the charter to Local 1010 was not a violation of the International's obligations to the local.[4] Over petitioners' objections the court refused to make specific findings with respect to the other matters set forth above on which the evidence was undisputed.

On appeal the first point in petitioners' brief was: "The Trial Court Erred: (1) in Failing to Find That

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[4]In the court below, the petitioners here had contended that as a matter of contract construction the issuance of the charter to 1010 was in and of itself a breach of the contract with 576 CIO, but its principal and separate contention at all times has been that the program of the International to destroy 576 CIO was such a breach of the contract between the parties as to relieve the local of its obligations thereunder.

Respondent International by Financing and Supporting Activities Designed to Destroy Appellant Local, Breached Its Contract With Appellant Local; and (2) in Finding Despite The Conclusive Proof of Such Financing and Support that the International Did Not Breach Its Contract With Appellant Local; and (3) On the Basis of the Proof on This Point, Rendering Judgment for Respondents (Plaintiffs and Cross-Defendants) Rather Than For Appellants (Defendants and Cross-Complainants)." (App. Op. Br., Dist. Ct. of Appeal, p. 88 *et seq.*) In respondents' reply the facts and argument under this heading were not disputed; they were ignored. (Resp. Br. in the Dist. Ct. of Appeal.) In appellants' reply brief in the District Court of Appeal, petitioners stated: "Appellants' principal contention is that the respondent abridged the essential contractual obligations it owed to the local by financing and supporting activities designed to destroy the local instead of promoting and assisting the local as explicitly required by the contract. This point completely ignored in respondents' brief, in and of itself should dispose of the entire case" (p. 9).[5]

The facts and argument which had been ignored although not disputed by respondents were likewise totally ignored although not disputed in the Court of Appeal's decision. The District Court of Appeal upheld the trial court's conclusion that the new charter was properly issued to Local 1010 by the International. (App. A, pp. 3-4.) But silence enveloped the undisputed facts regarding the campaign to deprive 576 CIO of all of its membership, contracts, checked off dues and other valuable

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[5]On the oral argument the respondents again ignored this point and this was pointed out to the court.

property rights. However, the District Court of Appeal did say: "Respondents' action was reasonable, legal and necessary in protecting its membership from the Communistic influence which, the local's membership felt was discouraging the acquisition of new members and was, itself, misrepresenting Local 576. It has been held that the Communist Party seeks its members especially in the labor unions in which it can compel employers to accept and retain its members. (*Black v. Cutter Laboratoires,* 43 A. C. 813, 829.) The trial court was entitled to find from the facts proved that this was the situation which the International was trying to prevent."

This represents, under the undisputed facts of this case, a holding that a union which is alleged to be subject to Communist influence may be attacked and marked for destruction by its International in violation of the International's contractual obligations to assist and protect the local, and still be bound to forfeit its property to the International if it treats its contract of affiliation with the International as having been breached by the conduct of the International.

The petition for hearing by the Supreme Court of the State of California was denied on July 27, 1955. This petition for certiorari follows.

How Federal Questions Are Presented.

The federal constitutional questions presented herein were raised first in petitioners' Petition for Rehearing filed with the District Court of Appeal following its adverse decision and were reiterated in their Petition

for Hearing by the Supreme Court. The questions were not raised at an earlier stage because the case appeared to involve only questions of state contract law. The contention of petitioners that by reason of the respondents' prior breach of contract resulting from the campaign to destroy 576 CIO, the forfeiture clause of that contract could not be enforced by respondents had never been answered by respondents. No contention had been made that a union allegedly under Communist influence could have its contracts violated with impunity. The holding to that effect was the first knowledge that petitioners had that such a proposition was being considered. The federal constitutional issues were presented at the first possible opportunity thereafter. Copies of the Petition for Rehearing and Petition for Hearing by the Supreme Court are included in the certified record filed in this Court.

Reasons for Granting the Writ.

The courts below have decided federal questions of substance not heretofore determined by this Court, and in a way not in accord with applicable decisions of this Court. State judicial action has resulted in stripping a trade union and its members of their property, rights and assets, and this upon arbitrary and unlawful grounds which disregard the obligations of a contract and the requirements of due process of law and the equal protection of the laws.

To reach this unconstitutional result, the courts below disregarded uncontradicted evidence which plainly demon-

strated the deprivation of federal rights.[6] Under the contract between petitioner local union and respondent International union, the respondent obligated itself to promote and assist petitioner in organizing all furniture workers in Los Angeles and vicinity. In express violation of the agreement, respondent conspired and overtly attempted to undermine, weaken and destroy the local union which it was obligated to support. Respondent hired persons for the sole purpose of carrying on a continual campaign to deprive petitioner and its membership of all of its contract and property rights. Employers were actually solicited by respondents and its agents to breach their contracts with petitioner and to refuse to forward dues checked off pursuant to contracts with petitioner.

All of the evidence establishing the persistent and wilful violation of its agreement by respondents was uncontradicted below. Respondents chose to ignore the uncontroverted proof, and the courts below followed suit. Nor

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[6]Where the result reached allegedly denies federal rights, this Court may re-examine the facts to determine whether a petitioner by contested proof or undisputed evidence has sustained his claim of unconstitutional deprivation. *Merchants Nat'l Bank v. City of Richmond*, 256 U. S. 635, 638; *Carlson v. Curtiss*, 234 U. S. 103, 106; *Brooklyn Bank v. O'Neil*, 324 U. S. 697, 703; *Kern-Limerick, Inc. v. Scurlock*, 347 U. S. 110, 121; *Hoover & Allison Co. v. Evatt*, 324 U. S. 652, 659; *Pierre v. Lousiana*, 306 U. S. 354, 358; *Creswell v. Knights of Pythias*, 225 U. S. 246, 261-2. Failure of the state courts below to consider the undisputed evidence or to make findings with respect thereto was in itself a contravention of the due process clause of the Constitution. *B. & O. R. R. Co. v. United States*, 298 U. S. 349, 368; *Georgia Ry. Co. v. Decatur*, 295 U. S. 165, 171. If the evidence was considered, but disregarded as immaterial, the necessity for review is equally plain. *Merchants Nat'l Bank v. City of Richmond*, 256 U. S. 635, 638; *Brooklyn Bank v. O'Neil*, 324 U. S. 697, 703; *Hoover & Allision Co. v. Evatt*, 324 U. S. 652, 659; *Pierre v. Louisiana*, 306 U. S. 354, 358.

was there any contention below that petitioners in any way violated the terms of its agreement with respondents. [Rep. Tr. 1306.] Moreover, respondents could not deny the constant efforts vainly made by petitioners t ascertain what their rights were in the light of the plain attempt by respondents to repudiate their contract obligations and to destroy the petitioners. Petitioners disaffiliated from respondents only after respondents had plainly and clearly repudiated the contract which bound the parties. The record is uncontradicted on this issue. It is fundamental that a repudiation of a contract, amounting to a breach, warrants the other party in treating the contract at an end. (*The Eliza Lines,* 199 U. S. 119, 128.) The rule, of course, is the same in all jurisdictions including California (*Oliver v. Campbell,* 43 Cal. 2d 298, 273 P. 2d 15; *Central Oil Co. v. So. Ref. Co.,* 154 Cal. 165, 97 Pac. 177), but the court below declined to apply the applicable law so far as the claims of petitioners were concerned.

It is in the light of the aforesaid uncontradicted record and applicable law that the action of the courts below must be considered. Those courts held, despite the evidence, that the ultimate act of disaffiliation by the petitioners (even if it came after absolute repudiation of the contract by the respondents) entitled respondents to invoke the forfeiture clause of the contract and deprive petitioners of all of their property, rights and assets, and this without notice, hearing or charges as required by the very contract which respondents had breached.

The essential basis for the ruling of the courts below is the view that public policy requires the state courts to sanction repudiation of contracts and the arbitrary confiscation of property whenever an international union deems such action the only available expedient for remov-

ing the "Communistic leadership" of a local union. Because the record was barren of any proof of wrongdoing by the local union, and indeed of any so-called "Communist leadership," the courts below were led to override the undisputed evidence at the trial and to decide the issues on grounds *dehors* the record. The opinion below states that "the regional CIO director informed respondent Pizer that the CIO had rid itself of Communistic leadership in the California State CIO Council and in the Los Angeles CIO Council, and that it was now up to the International to provide some relief to its own members in Los Angeles" (p. 2); ". . . the individual worker was entitled to be protected from the Communistic influence of the officers of the local" (p. 5); "It has been held that the Communist Party seeks its members especially in the labor unions in which it can compel employers to accept and retain its members. *Black v. Cutter Laboratories,* 43 A. C. 813, 829" (pp. 5-6).

1. The case herein bears the impress of the recently enunciated doctrine by the California courts in *Black v. Cutter Laboratories,* 43 A. C. 813, 278 P. 2d 905, certiorari granted by this Court on October 10, 1955. That doctrine, broadly stated, questions the right of Communists to earn a livelihood and the right of labor organizations to make and enforce collective bargaining agreements which as construed, provide protection for the employment rights of workers in industry including workers alleged to be Communists. Consistent with this doctrine, the courts below have decided that an international union may avoid its contract and arbitrarily deprive an association of its property, assets and rights if the officials of the International deem the officers of the local union to be following the "Communistic line."

Here, it should be noted, the courts have affirmatively aided the wrong-doer by their judgments and decrees. The case is not one of inaction; it is affirmative state action which has stripped the association and its members of all their property and privileges. This has been done in support of an unfettered discretion. For here there was no proof that any person involved was a Communist nor was there any evidence that petitioner or its leadership were "Communist controlled." During the process of undermining and destroying petitioners, respondent and its agents did indeed indulge in name calling. Based upon this bootstraps evidence, the position of respondent, adopted by the courts below, was that the property of the local union may be confiscated whenever the officers of the International in their opinion decide that the officers of the local union are following the "Communist line."

The implications of the holding below are as significant in legal terms as those presented in *Black v. Cutter Laboratories, supra,* upon which the Court below relied and which is presently before this Court on review. Much of the legal argument in the petition for writ of certiorari in *Black* is equally applicable here, and the questions there involved which moved this Court to grant the writ are either explicitly or implicitly presented here. If the policy of a state is to sanction the arbitrary destruction of all trade unions and the confiscation of their property, whenever the officers of an International union decide that the officers of the trade union are Communists, or following the "Communist line," this Court should at least decide whether such state action can be upheld in the light of constitutional inhibitions, especially when doubt has been cast upon the validity of such state

action by the recent grant of certiorari in *Black v. Cutter Laboratories.*

That the fundamental issues in *Black v. Cutter Laboratories* now pending before this Court and the case herein are virtually identical is evident from an examination of the posture of each of the cases below and the manner in which they arose. Basically, in *Black,* the union pursuant to its contract had obtained an arbitrator's award directing the reemployment of one of the members of the union, a beneficiary under the contract. The state courts refused to enforce the award made pursuant to the contract, thus not only effectively cutting off the remedy but the very right to contract itself. The grounds for this action was the asserted state policy which allegedly requires the state courts to refuse enforcement of contracts when a party in interest is a Communist. Such a case involving questions of palpable deprivation of rights and property without due process of law and denial of the equal protection of the laws could not avoid this Court's careful scrutiny.

The case herein present the same issues, though in a stronger setting. Here the contract was between the local union and international union. The breach of the contract was by the International, and the evidence of the breach was not disputed. Under ordinary contract law, the local union was entitled to consider the contract at an end, and it did so. Thereupon, the wrong-doer proceeded into the state courts and solicited their aid in enforcement of the very contract which it had breached and brought to an end. In total disregard of the uncontradicted evidence, the state courts gave their affirmative assistance to the wrong-doer and ordered the local union stripped of its properties, rights and assets. Thus, the

local union was deprived of its defense against the enforcement of a contract breached by the suing party; was deprived of the right to treat a contract at an end when the other party to the contract has absolutely repudiated the agreement; and therefore as effectively deprived of the right to contract as the union in *Black*. The grounds for these rulings with explicit reliance on *Black* in the opinion of the court below, were that the judgment was justified because of the "Communistic influence" in the local union. Thus, this time affirmatively, the state courts deprived petitioners of their properties without due process of law and denied to them the equal protection of the laws.[7] The deprivation of a legal right and defense by a state court which results in the arbitrary confiscation of the defendant's property for the benefit of the plaintiff (*Hovey v. Elliot*, 167 U. S. 409) is as much a denial of due process of law and the equal protection of the laws as the denial by a state court of a remedy for the enforcement of a property right (*Truax v. Corrigan*, 257 U. S. 312).

It is submitted, respectfully, that the issues in *Black v. Cutter Laboratories* and the proceeding herein are the same, and review should be granted here as in *Black*. It

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[7]Question (1) in the petition for writ of certiorari in *Black v. Cutter Laboratories* reads as follows: "Whether the decision below, by denying to petitioner the right to enforce a contract for employment in, and to one of petitioner's members the right to engage in, one of the ordinary vocations of life, constitutes State action depriving petitioner and its members of liberty and property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution." Compare question (1) herein. Virtually all the questions presented here were presented in the *Black* petition. The similarity is not merely fortuitous; it flows from the same state policy first enunciated by a majority of the California Supreme Court in *Black*, presently under review here.

may be also appropriate, it is respectfully submitted, in the event of the granting of the writ that the two cases should be heard together.

2. The case herein bristles with constitutional questions of serious import, ripe for adjudication. Petitioner, and its members, have been deprived of their property without substantive or procedural due process of law. State courts have given their sanction to a wrongful and highly injurious invasion of property rights. Substantively, the courts below have sanctioned a purely arbitrary or capricious exercise of asserted power whereby the owners of property have been deprived of their properties without recourse. Procedurally, the wrongdoer and the courts below, without notice, hearing, charges or proof, have concluded that petitioner is governed by "Communistic" officials and should therefore be denuded. In short, the state has deprived persons of their property without due process of law. The decisions of this Court manifestly condemn such action. (*Truax v. Corrigan,* 257 U. S. 312; *Meyer v. Nebraska,* 262 U. S. 390; *Truax v. Raich,* 239 U. S. 33.)

3. The courts below have enunciated a state policy which creates invidious and arbitrary distinctions between persons in the same class. It would appear, if the judgment below is permitted to stand, that only those local trade unions whose officers and members so conduct themselves as to satisfy the arbitrary edict of officials of another union that the local is free from "Communistic taint" are protected from wrongful invasions of their property or rights. Local unions deemed by the fiat of officials of an international union to be following the "Communist line" are without rights or remedies in the

state of California. The Fourteenth Amendment to the Constitution of the United States inhibits the state from denying to persons the equal protection of the laws. (*Shelley v. Kramer,* 334 U. S. 1; *Barrows v. Jackson,* 346 U. S. 249; *Yick Wo v. Hopkins,* 118 U. S. 356.)

4. The effect of the rulings of the state courts below is to vest legislative and executive governmental power in private organizations. The officers of organizations such as those of respondents here have been empowered to destroy local trade unions and deprive them of their properties, regardless of their constitution or contract, whenever such officers rule that the local union is following the "Communist line." The arrogation of similar powers even by officials of government has been denied. (*Wieman v. Updegraff,* 344 U. S. 183; *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U. S. 123.) This Court has held that there is no power in private combinations to assume the powers of a legislature or the duties of law enforcement. (*Eastern States Lumber Ass'n v. United States,* 234 U. S. 600, 614; *Fashion Guild v. Federal Trade Commission,* 312 U. S. 457, 465; *American Medical Ass'n v. United States,* 130 F. 2d 233, 248 (C. A., D. C., 1942), aff'd 317 U. S. 519; *United States v. Gypsum Co.,* 333 U. S. 364, 400.) Nor, where the fundamental rights to organize and to work for a living at decent standards are concerned, may private persons or combinations be empowered to arbitrarily deprive persons or groups of such rights. (*Steele v. Louisville & N. R. Co.,* 323 U. S. 192; *Tunstall v. Brotherhood of Locomotive F. & E.,* 323 U. S. 210; *Graham v. Brotherhood of Locomotive F. & E.,* 338 U. S. 232.) Moreover, the delegation of such arbitrary power to private persons by the state for the asserted purpose of freeing trade unions

from "Communist influence" raises serious questions of federal-state relationships. Whether the Internal Security Act of 1950, 50 U. S. C. A., Section 781, the Communist Control Act of 1954, 50 U. S. C. A., Section 841, and the Smith Act, 18 U. S. C. A., Section 2385, to raise only a few of the federal statutes, "preempts the field," is a question which has given this Court serious concern. (*Commonwealth v. Nelson,* 377 Pa. 58, 104 A. 2d 133 (1954), certiorari granted October 14, 1954. See also, *Hines v. Davidowitz,* 312 U. S. 52.)

5. The state courts below have sanctioned the deprivation of contract rights without notice, charges or a hearing, and without proof of wrongdoing except the unfounded and unambiguous accusation of "Communist influence." The effect of the holding is to deprive petitioner union (and all other unions similarly situated) of any right to enforce its contracts, and therefore of the right to contract itself, for in the case herein judgment has been rendered against petitioner despite the uncontradicted evidence of respondents' breach of contract and respondents' admission in open court that petitioner had never violated any of the obligations of the contract prior to such breach. Deprivation of the right to contract violates the fundamental law. (*Allgeyer v. Louisiana,* 165 U. S. 578; *Pierce v. Society of Sisters,* 268 U. S. 510.) The state policy enunciated by the courts below and now made into a rule of law attaints persons without a semblance of due process. (*Constitution,* Art. I, Sec. 9; *Cummings v. Missouri,* 4 Wall. (U. S.) 277.) It impairs the obligation of contracts (*Constitution,* Art. II, Sec. 10; *Columbia Railway v. South Carolina,* 261 U. S. 236; *Tidal Oil Co. v. Flannagan,* 263 U. S. 44) because by their reliance upon the rationale of *Black v. Cutter Labora-*

tories, the state courts have drawn upon the alleged policy of federal and state legislation in the internal security field to justify their actions here. (See, *Ashton v. Cameron County Dist.,* 298 U. S. 513; *Williams v. Bruffy,* 96 U. S. 176.) The effect of the state action below is to seriously undermine the right of persons to organize into trade unions of their own choosing and for trade unions to fairly represent their members in dealing with employers. (*American Steel Foundries v. Tri-City C. T. Council,* 257 U. S. 184, 208-9; *Senn v. Tile Layers Protective Union,* 301 U. S. 468.) The radial impact of the state policy embodied in the judgment below is to deprive persons of their right to earn a livelihood. This Court has been quick to hold any subtle encroachment upon this fundamental right. (*Yick Wo v. Hopkins,* 118 U. S. 356, 370; *Truax v. Raich,* 239 U. S. 33, 38; *Meyer v. Nebraska,* 262 U. S. 390, 399.)

6. Petitioner's rights to freedom of speech, press and assembly under the First Amendment as embodied in the Fourteenth Amendment are also impaired by the holdings of the courts below. If individuals or associations may be deprived of contract and property rights merely because of an accusation or label of "Communist," where in fact speech and action has been entirely lawful in character, then clearly self-censorship will be in order by those "who know the consequences" of any deviation from established dogma. (*Cf., Int. Ass'n of Mach. v. Labor Board,* 311 U. S. 72, 78.) The Constitution does not permit the abridgment of the fundamental freedoms by such unlawful means. (*DeJonge v. Oregon,* 299 U. S. 353; *Herndon v. Lowry,* 301 U. S. 242; *Stromberg v. California,* 283 U. S. 359.) Moreover, the view that a trade union and its

members may be deprived of all their property and contract rights because of some "Communist line" or "Communist influence" trenches deeply into the tradition that "beliefs are personal and not a matter of mere association." (*Schneiderman v. United States,* 320 U. S. 118, 136.) It offends decent standards of a civilized society to punish persons, not by proof of any wrongdoing, but merely for imputed association. (*Wieman v. Updegraff,* 344 U. S. 183.)

7. Finally, by the decision federal supremacy is undermined in the field of labor relations. Congress has adopted a comprehensive system for regulation of labor relations in all industries affecting commerce. (Labor-Management Relations Act of 1947, 29 U. S. C. 141, *et seq.*) The Act includes specific provisions with respect to eligibility of unions to the procedures of the Act which eligibility gives them the right to act as collective bargaining representatives. 576 CIO, the petitioner herein, which afterwards became an independent union, so qualified by the filing of its financial statements and non-Communist affidavits as required by law and in addition it was certified as collective bargaining representative in many shops. The effect of this decision is to hold that a union so qualified and so certified can be deprived of its right to contract or to enforce collective bargaining agreements because it may be labeled Communistic. Without the power to contract or to enforce its contracts labor unions cannot exist. Through this decision the state court has set up qualifications for functioning as a labor union which are in conflict with the qualifications established by the federal law. By this method employees are deprived of the right, guaranteed by federal law, to select their own collective bargaining agents, and the union's right established by

that law to act as such agent is thereby defeated. See *Hill v. Florida,* 325 U. S. 538; *Weber v. Anheuser Busch, Inc.,* 75 S. Ct. 480, 99 L. Ed. 386, Mar. 28, 1955, and cases summarized therein; Article VI of the United States Constitution.

Conclusion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BEN MARGOLIS,

Attorney for Petitioners.

APPENDIX A.

Constitutional Provisions Involved United States Constitution.

ARTICLE I.

Section 9.

No Bill of Attainder or *ex post facto* Law shall be passed.

Section 10.

No State shall . . . pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts.

ARTICLE VI.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

AMENDMENT XIV.

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes Involved.

Federal Statutes.

LABOR-MANAGEMENT RELATIONS ACT OF 1947.

29 U. S. C., Section 157.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

29 U. S. C., Section 159(a).

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

29 U. S. C., Section 159(b).

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

29 U. S. C., Section 159(f).

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b), of section 160 of this title,

unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and by-laws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) of this section were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and by-laws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial

transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor; and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) of this section to be filed with the Secretary of Labor.

29 U. S. C., Section 159(g).

It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B) of this section. No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

29 U. S. C., Section 159(h).

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 286, 287, 1001, 1022, and 1023 of Title 18 shall be applicable in respect to such affidavits.

APPENDIX B.

Opinion of the District Court of Appeal.

[2nd Civil No. 20224, May 31, 1955.]

Respondents sued appellants to enjoin the officers of appellant, independent Union 576, from disbursing and concealing the funds of Local 576, CIO, and to prevent appellants' use of the property of such local. The International Union is an unincorporated association and a labor union which exists for the purpose of representing workers in collective bargaining, for establishing wage standards and for improving the economic and social welfare of its members and of working people generally. Local 576 is also an unincorporated voluntary association existing by virtue of a charter issued to it by the International Union. Its purposes are the same as those of the International. Respondents brought the action individually and as officers of the International and as representatives of Local Union 576, United Furniture Workers of America, CIO.

In the latter part of 1949, the Congress of Industrial Organizations (herein called CIO) held a convention in Cleveland, Ohio, where an amendment to their constitution was adopted allowing the CIO Executive Board to expel any International Union "whose policies and activities are consistently directed toward the achievement of the program or the purposes of the Communist Party or other totalitarian movements." In accordance with this new amendment, charges were brought before the executive board of CIO against respondent herein, The United Furniture Workers of America (hereinafter called International) for the purpose of expelling respondent International on the ground that the Interna-

tional had consistently followed the Communist Party line. Immediately following these charges, the International president, Morris Pizer, publicly announced that he was supporting the CIO policy with the result that the charges by the CIO were deferred until after the forthcoming meeting of the International in June of 1950. After a great deal of debate and inner strife, the International adopted Pizer's resolution endorsing a pro-CIO, anti-communist policy and defeated the opposing resolution that was anti-CIO.

Local Union 576, United Furniture Workers of America, CIO (herein referred to as Local 576) was chartered by and affiliated with the International. When the national conference of June, 1950, was held, Local 576 sent as its representative to the conference, appellant Gus Brown. He supported and voted for the anti-CIO resolution. The convention delegates voted in favor of the pro-CIO, anti-communist resolution 25,524 to 6,307. Appellant Brown as representative of Local 576 therefore lost. It was assumed by the International that the local unions, as satellites of the International, would abide by the parent organization's decision and remove any Communistic leadership that existed in their respective groups. Such, however, was not the case here and Local 576 continued to follow the policy that had been banished by the International. When the attitude of the leaders of 576 became generally known, its membership began appreciably to decline numerically. Request were made to the International to issue a new charter. Finally, the regional CIO director informed respondent Pizer that the CIO had rid itself of Communistic leadership in the California State CIO Council and in the Los Angeles CIO Council, and that it was now up to the International to

provide some relief to its own members in Los Angeles. A petition was received by Pizer from certain members of 576 stating that the local was no longer able to give the proper protection to its members; that their bargaining power was sacrificed because the local was too easily attacked on the Communist issue by the employers; that "its officers have appointed shop stewards against the wishes of the members and have prevented the elected shop stewards from functioning." As the danger of losing its membership to the AF of L was imminent, Pizer as president of the Internationai, with the approval and consent of its General Executive Board, on August 1, 1950, issued a charter to Local 1010, United Furniture Workers of America, in order to preserve the membership of Local 576 to the CIO. This new Local 1010 was chartered for the purpose of absorbing the anti-Communist members of Local 576 and preserving their membership to the International. On August 16 the officers of 576 formally established the independent union, also known as 576, herein referred to as "Independent 576" CIO funds of Local 576 were immediately disbursed by the new union as back pay, advance legal fees, prepayments to the accountant, etc. On September 14, 1950, respondents filed the instant action and asked for an injunction to prevent the Independent 576 from disbursing and concealing the funds and from appropriating the name of CIO 576. A preliminary injunction was granted December 26, 1950, substantially complying with plaintiffs' request. Subsequently, the case came to trial resulting in a judgment for plaintiffs. This appeal is from that judgment.

Appellants contend that the trial court erred in finding that there was no breach of contract by the International;

that under the local's constitution, the International was obligated to support Local 576; instead of this support, the International attempted to destroy Local 576 by chartering Local 1010 in the same area; that 576 had finally to withdraw from the International to protect itself from destruction although Local 576 actually wished to stay with the International.

Such contention brings us face to face with the principal issue, to-wit, whether a group of members of a local union may secede from the parent body and take with it the name, funds, properties and other assets of the original local. It is stipulated by appellants that they violated the constitution in their disaffiliation from the International. They contend, however, that the contract had already been breached by the International's conduct, thus relieving appellants of the obligation to follow the constitution. By reason of such stipulation, a complete interpretation of the constitution is unnecessary. Article XXXIX of the local's constitution, Section 2, states that so long as seven members continue their affiliation with the International, all property and funds shall remain with the local. If less than seven members continue their affiliation with the local, all property and funds shall revert to the parent organization. Section 3 states that no funds shall be distributed or divided among the members of the local in contemplation of secession or disaffiliation with the International. Findings 6 and 7 declare that the provisions of Article XXXIX were violated.

In a case directly in point, even to the requirement that seven members must remain affiliated for the local to function, it was held that the new independent local was not entitled to the funds or the collective bargaining agreements upon seceding from its parent organization.

(Morrison v. Majestic Laundry System, 103 N. Y. S. 2d 791, 797; see also Federation of Insurance Employees v. United Office and Professional Workers, 74 A. 2d 446, 449.) The law is well settled in this state that the International had a better title to the property of the disbanded union than the newly formed independent even though some of the membership might remain the same. (Brown v. Hook, 79 Cal. App. 2d 781, 795.)

The trial court found herein that there was no breach of contract on the part of the International, that under the constitution, the individual worker was entitled to be protected from the Communistic influence of the officers of the local; that it was the individual workers of the local to whom the International owed a duty and not the local as such. The preamble of the constitution refers to the wage earners and Article III, Section 1, reads, "The jurisdiction of the United Furniture Workers of America shall consist of *all workers* employed in or about the plants." Appellants' authorities are distinguished on their facts. (Local 1140 v. United Electrical, Radio & Machine Workers, 45 N. W. 2d 408.) In the case at bar, the International was not expelled from the CIO and there was no question about the direct relationship of Local 576 to the CIO. Even if the situation were such as to present the question of affiliation with the CIO through the parent International, appellants' contentions are answered by Seslar v. Union Local 901 Inc., 87 Fed. Supp. 447, 450, which held that the only contact the local has with the CIO is through the International. Respondents' action was reasonable, legal and necessary in protecting its membership from the Communistic influence which, the local's membership felt, was discouraging the acquisition of new members and was, itself, misrepresenting Local 576. It has been held that the Communist

party seeks its members especially in the labor unions in which it can compel employers to accept and retain its members. (Black v. Cutter Laboratories, 43 A. C. 813, 829.) The trial court was entitled to find from the facts proved that this was the situation which the International was trying to prevent.

Appellants contend that the International breached its contract by issuing a new charter to 1010 in the territory of 576. It was proved to be common practice to have more than one local in the same area. Examples were Burlington, Vermont, and Jamestown, Buffalo and New York City. Nowhere do appellants specify the section of the constitution that contains such a provision as would restrict an area to one local. The constitution limited the jurisdiction of 576 to furniture workers but did not forbid the International to grant future charters. The trial court held that the International was justified, not in setting up a rival organization, but in attempting to protect the local's present membership by the means to which it resorted.

Appellants contend that the court erred in enjoining the use of the name "576" to the new independent and in preserving the name as property to the International. In Brown v. Hook, *supra*, page 796, the court held that the names of the two locals are the same; that the name is the property of the International and that the respondents were entitled to an injunction to protect their rights to its exclusive use, because of the "confusion and misleading that must necessarily follow." (*Ibid.* p. 800.)

Appellants state, "If there was any doubt in the trial judge's mind about the financial . . . support given to appellant local . . ." such records should have been produced. It is not for this court to surmise upon the

possibility of doubt in the mind of the trial judge. Nowhere does it appear in the record that any such doubt prevailed in the making of the findings. They are positive, clear and concise, indicating no vacillation or uncertainty.

Appellants contend that the trial court should have allowed the introduction into evidence of a purported statement of respondent Pizer made in 1948 to the effect that the International was obligated to the local to help it retain its membership. The refusal of the trial court to admit a purported statement made in 1948 under entirely different circumstances and policy could hardly be said to be prejudicial, especially in the light of the finding that one of the main reasons and purposes of the International's action was to preserve the local membership of 576 to the International union and prevent their defection to a rival organization.

Appellants contend that (1) the court erred in ruling as hearsay what was said at the organization of Independent 576 and (2) that it erred in admitting a letter into evidence purportedly signed by appellant Brown. It is not shown how either ruling caused prejudice or influenced the court's determination of the case. In the absence of such showing, this court will not indulge in a lengthy discussion of the trial court's ruling. Although appellants specify numerous alleged errors in the admission and rejection of evidence, "it is considered unnecessary to enumerate them for the reason that error under our law is no longer deemed prejudicial . . ." unless resulting in a miscarriage of justice. (Const. Sec. 4½, Art. VI.) The burden rests on the complaining party to show not only error but error which is sufficient to justify a reversal. This the appellants have failed to do. (Coleman v. Farwell, 206 Cal. 740, 741.)

Appellants contend that the trial judge committed prejudicial error with respect to the accounting by charging appellants (1) for uncollectible accounts receivable, (2) for refund of wage deductions, (3) for legal retainer, (4) for interest commencing October 6, 1950, and (5) for expenses after August 15, 1950. The basis for these contentions is mainly that the amounts due are unliquidated and therefore uncertain and thus cannot be awarded by the court. In similar circumstances, it was held that although the exact amounts of indebtedness were not known at the time the complaint was filed, this fact did not render a claim unliquidated. Appellant had the use of the money and it would be unjust and inequitable not to charge him with interest from the time the action was brought. The claims of respondent were capable of being made certain by calculations within the meaning of Section 3287, Civil Code. (Peterson v. Lyders, 139 Cal. App. 307, 309.) Furthermore, the only necessity for an accounting was the result of the appellants' failure properly to account for the funds it had converted. (Meyers v. The Texas Company, 6 Cal. 2d 610, 618.) As it can be ascertained from the record that there is no miscarriage of justice in the accounting rendered, we shall uphold the findings of the trial court. (Whann v. Doell, 192 Cal. 680, 684.)

Respondents action in all respects has been reasonable, legal and necessary and they did not appear before the trial court with unclean hands.

The judgment is affirmed.

MOORE, *P. J.*

We concur:

McCOMB, *J.*

FOX, *J.*

APPENDIX C.

Order Denying Hearing After Judgment by District Court of Appeal.

[2d District, Division 2, Civil No. 20224.]

Order Due July 30, 1955.

In the Supreme Court of the State of California.

In Bank.

Pizer, *et al.*, Plaintiffs & Respondents, vs. Brown, *et al.*, Appellants, Brown-Saltman Furniture Co., *et al.*, Defendants and Respondents.

Appellants' petition for hearing Denied.

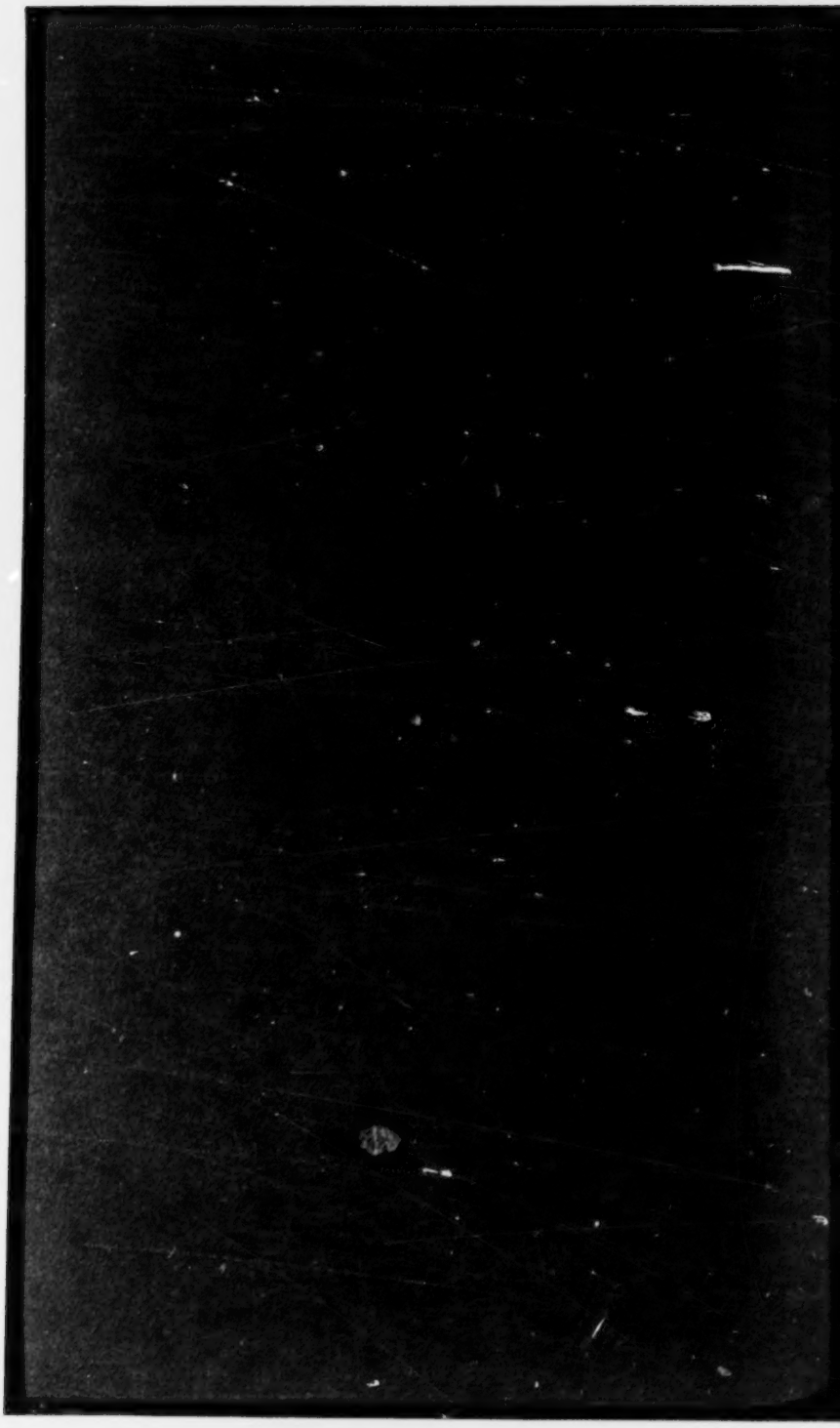
GIBSON, *Chief Justice.*

Filed July 27, 1955.

WILLIAM I. SULLIVAN, *Clerk,*

By.....,

S. F. Deputy.



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IN THE

Supreme Court of the United States

October Term, 1955.
No. 510

GUS O. BROWN and OSCAR CASTRO, individually and as Business Agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; ERNEST MARSH and HENRY B. HOLMES, individually and as organizers of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; KRUGER CLARK, LAWRENCE TURNER, JACOB LEHMAN, SOL STEINHARD, DAN QUIJARDA, PETER BEEKES, LOUISA TOCCI, MARK ROBINSON, JOE N. OLIVER, and ROBERT BURRI, individually and as officers and agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association, FURNITURE WORKERS, UPHOLSTERERS AND WOOD WORKERS UNION, Local 576 (INDEPENDENT), a voluntary unincorporated association; LOUIS COTA, JR., individually and as President thereof; GUILLERMO NAVARROS, individually and as Financial Secretary thereof; HENRY MOBLEY, individually and as Treasurer thereof,

Petitioners,

vs.

MORRIS PIZER, individually and as International President, and WILLIAM GILBERT, individually and as International Representative of and Members and representatives of the members of the United Furniture Workers of America, a voluntary unincorporated association, ALEX O. RIVERA, FRANK JONES, GEORGE B. TRIPP, FRANCES CARR, CHRIS LAGUTARIS, and ETHEL KIGGINS, individually and as members of and representatives of the members of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association,

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California, Division Two.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Jurisdiction.

Respondents contend, for the reasons pointed out below, that this Court has no jurisdiction and that jurisdiction under 28 U. S. C. 1257(3) is improperly invoked by petitioners.

Constitutional Provisions and Statutes Involved.

Respondents likewise contend that there are no federal constitutional or statutory provisions involved in this case.

Questions Presented.

1. Whether there are any federal questions in this case;

2. Whether, if there are any federal questions, they were timely raised in the court below;

3. Whether a group of individual members of a local union who attempt to secede from the parent body, the International Union, in violation of the constitution of the International, may take with it (the seceding group of individuals) the name, funds, properties and other assets of the original local?

Statement of the Case.

Respondents are dissatisfied with petitioners' statement of the case; hence present herewith their own. (Rule 40(3) of this court.)

1. Preliminary Statement.

Respondents[1] brought this action on behalf of United Furniture Workers of America, CIO, herein called the International, and on behalf of Local Union 576, United

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[1]In California, wherein this action was commenced, it is necessary for an unincorporated association, as plaintiff, to bring the action in the name of individuals, who sue individually and in their representative capacities, and "for and on behalf of the members of" the plaintiff-union. *Kadota Fig Association v. Case Swayne Co.*, 73 Cal. App. 2d 796, 802. However, under California Code of Civil Procedure, Sec. 388, an unincorporated association may be sued as a defendant in its own name. [See the Pleadings, Clk. Tr. 1, 39, 42.]

Furniture Workers of America, CIO, herein called Local 576, CIO, to enjoin the individual petitioners and Furniture Workers, Upholsterers and Woodworkers Union Local 576 Independent, herein called Independent, from disbursing and concealing the funds of Local 576, CIO, to prevent petitioners' use of the property of Local 576, CIO, to enjoin the use, by petitioners of the name and number of Local 576, CIO, and to recover from petitioners the funds, property and other assets of the original union, Local 576, CIO.

Contrary to the statements of petitioners and the impression sought to be created in petitioners' "Statement of the Case" (Pet. pp. 5-16), this is not a proceeding by an international union against one of its own locals but rather an action by the International and its Local 576, CIO, against a group of individuals who attempted to secede from the original local, and against the Independent which the secessionists attempted to establish and maintain as an alleged successor to Local 576, CIO.

2. Relationship of the International to the Local.

The relationship between the International and its Locals is determined by the International constitution.

Under the Constitution [Ex. 1] of the International, the International is the controlling body and the "life giving" source of the existence of any local. The International is an organization of workers, of people, of individuals, and not of "locals." Throughout the Constitution do we find this thought, again and again made certain. Thus, in the "Preamble" we find this language:

> "Realizing that we must adopt a form of organization that will most effectively serve to protect and defend our interest and improve our conditions as

wage earners.[2] We, the United Furniture Workers of America have adopted . . ."

The "Local Officers' Pledge," and "New Members' Pledge," bind all those subscribing thereto to the International, as well as to the Local.

Similarly, Article II "Objects" Section, states:

"(a) To unite in our International all *workers* embraced in our jurisdiction.

"(b) To establish wage standards adequate to maintain a decent American standard of living for all *workers* in our industry.

* * * * * * * *

"(d) To reach and maintain agreements with employers as to wages, hours of labor and working conditions and to seek through such agreements to establish maximum job and union security for *members* of the United Furniture Workers of America."

The Jurisdiction of the International, Article III of the Constitution is described, in part, as follows:

"Section 1. The jurisdiction of the United Furniture Workers of America shall consist *of all workers* employed in or about the plants of manufacturers of furniture and kindred products; . . ."

Further emphasis appears in Article V, Sections 4 and 7, and Article VII, Section 5, wherein representation of subordinate locals and voting at conventions is determined by *membership* in good standing in the International.

The foregoing references, and others, establish the fact that the International is comprised of individuals, and the

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[2]All italics in this Brief have been supplied, unless otherwise noted.

International officers are obligated to protect the rights of the members in fulfilling the objectives of the International.

The International is not a loose federation of autonomous locals. There exists an integrated and controlled relationship, under which the activities of the local are directed by and subordinated to the International.

Further examination of the Constitution indicates that in Article XIX, Section 1, the General Executive Board has power to settle disputes among the subordinate bodies; Section 7, to levy assessments; Section 12, to institute investigations of local unions; Article XXXII, to exonerate locals from payment of per capita; and Article XLIII, Section 4, to approve the action of the International President in issuing a charter which shall cause a division of an existing local.

Article IV, Section 1, provides for the General Executive Board to designate the place of the biennial convention. The General Executive Board, as well as the officers of the International are elected at the Convention by vote of the delegates.

In Article XV we find described some of the duties of the International President. Section 1 provides that he shall be the Chief Executive Officer of the International, preside over General Executive Board meetings, and International Conventions; *enforce all laws; and be ex officio* member of all committees.

Section 3, the importance of which will be discussed later, and which importance suggests that it be here set out in full, reads as follows:

> "Section 3. Whenever a dispute shall arise concerning the interpretation of this Constitution, or

rules of the International Union, such disputes shall be referred to the International President and his decision shall be binding as a law, subject, however, to appeal to the General Executive Board or further appeal to the International Convention."

It is the International President's duty, under Section 7, to supervise contracts in every district and, under Section 8 he is in complete charge of the Organizational Department.

Article XXIII provides for the establishment and maintenance of four Regions and eleven Districts, "to promote the objectives of the International Union," and requires that all locals "become part of their respective District Councils and shall be subject to the rules and regulations governing such Councils."

Locals must file complete certified or public accountant's reports with the International and, upon default, "the International Union shall have the right to send a representative to the Local who shall be empowered to examine the books of the Local." (Art. XXXI, Sec. 3.)

Under the requirements of Article XXXVIII, all by-laws of locals are subject to the approval of the International President and cannot be in conflict with any provisions of the Constitution, or any of the policies of the International.

Article XXXIX, Section 1, provides the detailed methods for disaffiliation of a local from the International. Sections 2 and 3 of said Article XXXIX provide:

"Section 2. So long as seven members remain or continue their affiliation with the local affiliate of the United Furniture Workers of America, the local shall be deemed to continue to exist and all property,

real or personal of whatsoever nature including assets, contracts, monies, accounts and all other properties and effects shall inure to, belong to and be the property of the local union. If fewer than seven members remain or continue their affiliation with the local after the procedure described in Section 1 of this Article has been complied with, the charter of said local shall be deemed to have been withdrawn and all other property, real or personal of whatsoever nature, including assets, shall revert to, inure, belong to and become the property of the United Furniture Workers of America.

"Section 3. No local union shall divide or distribute among its members, the funds, property and effects of the local union. Should any local union or officer or officers thereof remove any funds or properties from said local union or from any bank account in which said local union has its funds or any other property in contemplation or furtherance of disbandment, dissolution, secession, or disaffiliation from the United Furniture Workers of America or for any purpose inconsistent with this constitution or the constitution or by-laws of the local union, all such property, funds and effects shall for all purposes be deemed to be held by such local union or officer or officers thereof as trustees in trust for the United Furniture Workers of America to be turned over to it upon demand."

Article XL provides that no local may make an appeal for funds among other locals without the approval of the International President, and after such approval, the appeal shall be sent among the various locals through the International office.

Members in good standing in one local are entitled to a transfer card entitling them to membership in another local. (Art. XLI, Sec. 1.)

Article L provides that the Constitution may be amended by a majority vote at the International Convention, or "by a referendum vote of the *International Union's good standing members.*"

As will appear from an examination of the Charter [Ex. 3], there is no "jurisdiction . . . on a geographical basis." The Constitution, Article III, recites the jurisdiction in terms of occupations. Further, neither in the Constitution, nor in the Charter can be found any provisions or authority for exclusive grants, jurisdictionally or otherwise, to any local.

3. Chronology of Events.

a.

At its Cleveland, Ohio, convention in 1949, the Congress of Industrial Organizations, herein called "National CIO," or "CIO" authorized the CIO Executive Board, by a two-thirds vote, to expel any International Union "whose policies and activities are consistently directed toward the achievement of the program or the purposes of the Communist Party or other totalitarian movements." [Ex. 6, p. 18 of Ex. 5 id.; Exs. 11 and 12, pp. 16 and 17 of Ex. 5 id.] Charges thereafter were brought by National CIO against the International, seeking to expel the International from CIO, on the grounds that the International had consistently followed the Communist Party line. [Rep. Tr. pp. 186-187; Ex. 12, pp. 16 and 17 of Ex. 5 id.] International President Morris Pizer, one of the respondents herein, in November, 1949 (following the CIO Convention at Cleveland) at a convention of District Council 8, of the International, at Janesville, Wisconsin, publicly announced that he was supporting National CIO policy, and would recommend to the next International

Convention, in June, 1950, the adoption of a resolution supporting National CIO in its opposition to the Communist Party. It was this announcement by International President Pizer which deferred the trial of the International by the CIO until some time after the International Convention. [Rep. Tr. pp. 196, 197, 198, 199; Ex. 12, pp. 16 and 17 of Ex. 5 id.; and Ex. 16, pp. 117 to 119 of Ex. 5 id.] At the Janesville Convention, petitioner Marsh opposed the position taken by respondent Pizer.

The General Executive Board of the International met in New York from December 6 to 9, 1949, and President Pizer introduced his resolution in support of National CIO. Max Perlow, then Secretary-Treasurer of the International, and petitioner Marsh introduced an opposing resolution, referred to in the record as the "Perlow" resolution. The latter resolution was adopted by the General Executive Board. [Ex. 8, p. 43 of Ex. 5 id.; Rep. Tr. pp. 206-207.] The General Executive Board also voted, however, to refer both the pro-CIO resolution of Pizer, and what may be described as the anti-CIO resolution of Perlow, to the International Convention for final disposition. [Ex. 7, p. 17 of Ex. 5 id.]

From December 1949, to June 1950, Petitioners continued to manifest and make known their opposition to accepting and following National CIO policy. Petitioner Brown urged employees, at a public wage conference, to maintain their former policies. *". . . even if it means losing the CIO label."* [Ex. 62.] Petitioners' newspaper, in the issue of May 23, 1950, commenting on the International Convention scheduled for June, 1950, at Chicago, anticipated the coming battle in the following language:

> "The Convention to which Brown and Castro (Petitioners) were elected will center mainly on the

question of whether the Union will follow National CIO policy. . . ." [Ex. 47.]

This defiance by the local leadership of the National CIO's policy was not without disastrous effect upon the membership, the local and the International. On November 11, 1949, a majority of 115, of a total of 139 eligible members at the Superior Sleeprite Corporation in protest against the leaders of their local, petitioned for disaffiliation from Local 576 and reaffiliation with another CIO union. [Rep. Tr. pp. 83, 84, 85; Ex. 2.] Following meetings with CIO Regional Director DeShelter, and others, the employees became affiliated with the Textile Workers Union of America, CIO. [Rep. Tr. pp. 86-90.] On June 21, 1950, the employees sent a telegram to President Pizer, advising him that they ". . . are going elsewhere for a union home." [Ex. 4.] The record shows that the average membership for Local 576, for the first quarter of 1950 was 646 fewer members than for the corresponding period in 1948. [Exs. 5, 6, p. 79 of Ex. 5 id.]

At the Convention of the International in June, 1950. one of the principal issues (as correctly anticipated by petitioners [Ex. 47]), was whether the International would support National CIO. The pro-CIO adherents, identified in the Convention as the "Pizer" group, successfully and decisively prevailed over those who opposed the National CIO policy, identified in the Convention as the "Perlow" group. The respective positions of these groups are found in Exhibits 6, 7, 8, 11, 12 and 14, contained in Exhibit 5 for identification. The convention delegates voted 25,524 in support of the Pizer (pro-CIO resolution) and 6,307 in support of the Perlow resolution. Petitioners Brown and Marsh, representing Locals 576

and 577, supported Perlow. [Ex. 15, pp. 157, 158, 159 and 160 of Ex. 5 id.] Petitioner Marsh was a candidate for the office of President of the International and ran against respondent Pizer. The result of this vote was, for Pizer, 24,108 and for Marsh 7,234. [Ex. 20, pp. 228 and 229 of Ex. 5 id.]

Max Perlow ran for reelection as Secretary-Treasurer. In his acceptance of the nomination, he said:

> "I wish to muster all the support I can so that this can express the resentment of what is taking place now in the CIO and to what has taken place here at this Convention in the past few days . . . I would rather associate myself with . . . Harry Bridges and his struggle, with the Hollywood Ten and their struggles for their principles than with Jim Carey. . . ." (Jim Carey, with whom Perlow would rather not be associated was then Secretary of National CIO, and is now a Vice-President of AFL-CIO.)

Upon this platform, Perlow was defeated by a vote of 19,476 for Fred Fulford and 7,083 for Perlow. [Exs. 21 and 22, pp. 234, 235, 236 and 239 of Ex. 5 id.]

All candidates for all offices who were opposed to CIO policy were defeated. All those who stood on the Pizer program, were elected. [Rep. Tr. pp. 234, 236.]

In the light of subsequent events, *viz.:* the attempt by the petitioners to secede from the International, and take with them the assets, funds and property of Local 576, it is with interest that we observe at the Convention, the attempts by the anti-CIO or Perlow group, to amend the Constitution, to delete therefrom the section which provides that as long as seven members of any local remain, the funds, property and assets remain with the local, or in

the event less than seven members remain, then upon secession, or disaffiliation the funds, property and assets of the local shall become the property of the International. The references were to Article 40 of the then existing constitution, and what is Article 39 in Exhibit 1. [Rep. Tr. p. 232.] To have succeeded in the deletion of this clause, would have left the way open to the secessionists to properly accomplish that which was and remained illegal. Petitioners Brown and Marsh voted to change the Constitution. The final vote was 23,421 to continue the property clause in its present form, and 9,035 to change. [Exs. 17, 18 and 19, at pp. 201, 202, 203, 204, 210, 211, 21, 14 and 15 of Ex. 5 id.]

b.

After the International Convention respondent Pizer and officers of the International Executive Board visited Los Angeles to investigate the difficulties and differences in the local. [Rep. Tr. pp. 38, 239, 240.] The investigation disclosed that the members wanted a new local [Rep. Tr. pp. 922, 1059] or they would go to the AFL. [Rep. Tr. pp. 1075-1078.] The CIO Regional Director and other CIO leaders advised respondent Pizer that something had to be done to prevent loss of furniture workers from the CIO to the AFL or some other union. [Rep. Tr. pp. 1160, 1162, 1176, 1178, 1179.]

On or about July 9, 1950, respondent Pizer received a letter from Los Angeles, further reporting the conditions in Los Angeles and requesting a new charter. This letter [Ex. 23] reads in part as follows:

> "At a meeting of the Brown-Saltman Shop employees, all members of UFWA-576-CIO, on *June 22, 1950, by a unanimous vote—voted to leave Local 576, because its leadership are anti-CIO; anti-de-*

mocracy (sic) and because they are still carrying on a campaign against our Int'l Officers—they are only concerned in furthering the Communist program of Russia.

"On June 22, 1950, in voting to leave Local 576, our Chief Steward was instructed to contact you (Int'l Pres.) and *ask for the protection through the Int'l so as to remain within UFWA-CIO;* and if this was not possible then to contact the Nat'l CIO office here and make the same request, in order to remain in C.I.O. *because our membership are 100% for CIO,* however, *in the event that we did not receive any satisfaction either from our Int'l Union of (sic) the Natl'l CIO office locally then we would have no alternative but to seek a home elsewhere."*

The petition for a new charter [Ex. 24], which accompanied the letter referred to above, contains the following statements:

"WE DESIRE TO REMAIN IN THE UNITED FURNITURE WORKERS, CIO, AND WE ARE LOYAL TO IT. BECAUSE OF THIS FEELING, WE DO NOT DESIRE TO BE IN LOCAL 576 BECAUSE WE BELIEVE IT TO BE COMMUNIST DOMINATED AND BECAUSE ITS OFFICERS HAVE APPOINTED SHOP STEWARDS AGAINST THE WISHES OF THE MEMBERS AND HAVE PREVENTED THE ELECTED SHOP STEWARDS FROM FUNCTIONING.

"WE ARE IN DEADLY EARNEST, IF YOU DO NOT SEE FIT TO GRANT US SUCH A CHARTER, WE SHALL BE FORCED TO SEEK A HOME ELSEWHERE."

The workers, members of Local 576, CIO, had already taken steps to go over to an AFL union, and there was the threat and danger that others would leave

CIO unless a new local, one dedicated to the National CIO policy, was created. [Rep. Tr. p. 500.]

On August 1, 1950, respondent Pizer, as President of the International, with the approval and consent of the General Executive Board, issued a charter to Local 1010, United Furniture Workers of America, herein called Local 1010. [Rep. Tr. p. 130, Exs. 24, 25, 26.]

c.

At no time prior to the secession movement by the petitioners did the International take any action against the petitioners. The issuance of the charter to Local 1010 was not punitive nor retaliatory. The charter was issued for the sole purpose of preserving the membership within the International and within CIO. This action was consistent with the International Constitution and the practice thereunder. [Rep. Tr. pp. 504-509.]

4. Respondents' Position.

Respondents' case in the trial court, and its position as sustained by the reviewing courts, were based upon the simple proposition, supported by the law in California, that a seceding group of individuals has no rights to the name, funds and other assets of the original local. It was unequivocally stated that the International Union had a right to issue the charter to Local 1010, pursuant to the provisions of the constitution. The Trial Court so found. It was never the position of respondents that the right of the International was founded upon a prior breach of the agreement by the secessionists or that any alleged Communistic activities was the reason for the issuance of the new charter. Petitioner has quoted in part (Pet. p. 7) the position taken by respondents during the trial. Let us examine this position more fully.

Counsel for respondents stated [at Rep. Tr. p. 1306] the following:

> ". . . When the charter (to Local 1010) was issued as of August 1st there was no breach by the officers of Local 576 upon which action could be brought under the constitution. Such a breach did occur on August 16th, to take one date that has been fixed here, when an attempt was made to set up a rival organization and to appropriate the name and funds and property of 576 for the use of the rival organization. There is nothing in the constitution of the International Union or any of its rules or by-laws which says that the officers of any particular local cannot have political opinions or beliefs which are different from that of the International president or the majority in the International Union. We do not claim that because some of the officers of Local 576 may have disagreed on questions of policy with the International Union that the International Union would then have a right to expel those officers from the International or to revoke its charter. That is not our position. Our position, however, is that when the individual members of that local disagree for any reason—in this case apparently for political reasons—with the leaders of that particular local, and when those individuals and groups of them are taking steps to withdraw from the International Union and to go elsewhere, the International Union has a three-fold obligation: It has an obligation to the individual members of the union to try and keep them within the International Union, if they so desire; it has an obligation to the other locals of the International Union to see that the furniture workers in Los Angeles remain organized in the United Furniture Workers of America for the mutual protection of the wage rates and work-

ing conditions of other workers in the furniture in dustry outside of the Los Angeles area; and, thirdly it has an obligation to National CIO with whom th United Furniture Workers is affiliated to see tha the CIO membership through the Furniture Work ers Union in the Los Angeles area is protected an maintained. That is the reason it had a right t issue the charter, and that was the reason for whic it issued the charter."

5. International Did Not Breach Its Contract.

Among the "Reasons for Granting the Writ" petition ers assert (Pet. pp. 18, 22) that respondents and th Courts below "ignored" petitioners' contentions that th International was guilty of a breach of the Internationa constitution. These assertions were not ignored. They were put in issue by the pleadings, the Trial Court re ceived evidence in support and denial of these assertions the question was argued before the Trial Court, and th Court found, definitely, that the International did no breach its contract.

ARGUMENT.

I.

The Invocation by Petitioners of the Jurisdiction of This Court Under 29 U. S. C. 1257(3) Is Improper, Because (a) There Is No Federal Question in the Case and (b) the Alleged Federal Questions Were Not Timely Raised in the State Courts in Accordance With State Law and in Accordance With the Decisions of This Court.

A.

The Alleged Federal Questions Were Not Timely Raised.

Petitioners concede (Pet. p. 16) that the first time they raised the alleged federal questions was in their Petition for Rehearing filed with the District Court of Appeal. They claim (Pet. p. 17) that these alleged "federal constitutional issues were presented at the first possible opportunity" after they appeared in the case. As will be shown below, there are not now, and never have been, any federal questions in the case. But assuming, *arguendo*, that there were, the posture of the case now is no different from what it was before the trial court, at which stage petitioners admit (Pet. p. 17) the case involved "only questions of state contract law." (*Ibid.*)

The same incorrect charge that petitioners level against the Court below, based upon the straw man that the reason for that Court's decision is the Communist influence under which the petitioners were alleged to be, could by the same token, and should, have been levelled against the Trial Court. In that regard, the Trial Court and the Court below are no different. Thus the Trial Court found in its Findings of Fact [Clk. Tr. pp. 77-78]:

> "19. That the International did not breach its contract with Local 576 by the issuance of a Charter

to Local 1010, United Furniture Workers of America, CIO, hereinafter called Local 1010. That the CIO, at its Convention in 1949 adopted a policy to rid itself of those unions that persisted in following the Communistic line; that in furtherance of said policy and pursuant to it, the CIO had expelled or caused the disaffiliation of those international unions that had persisted in following the Communistic line; that there was a real danger that such expulsion or disaffiliation might occur to the International Union. That at its convention in June, 1950, the International Union adopted a resolution which resulted in a change of its policy and in the adoption of CIO policy. That the conduct and statement of defendants Gus O. Brown, Oscar Castro and Ernest Marsh at the convention of June, 1950 and following said convention, gave plaintiff, Morris Pizer and the International Union's General Executive Board reason to believe that the status of the International Union as an affiliate of CIO, would be in jeopardy unless some action were taken; that on the basis of warnings of CIO Regional Director, DeShelter, and other CIO leaders in Los Angeles, plaintiff Morris Pizer, had reason to believe that said DeShelter and other CIO leaders would step in and take action in connection with Local 576. That members of the General Executive Board of the International Union and rank and file members of Local 576 had advised plaintiff, Morris Pizer, of the condition and situation in Local 576, particularly in the loss of membership that did occur and which was threatened to occur. That the plaintiff Morris Pizer, by and with the consent of the General Executive Board of the International Union did issue a charter to Local 1010 on or about August 1, 1950, which charter was installed and presented to the membership of Local 1010 at Los Angeles, California, on or about Au-

gust 4, 1950. That the action taken by the plaintiff Morris Pizer, and the International Union's General Executive Board, namely, the granting of the charter to Local 1010 and the implementation thereof was right, proper and reasonably necessary to protect the International Union and its membership in Los Angeles and vicinity. That the issuance of the charter to Local 1010 was within the powers and authority of plaintiff Morris Pizer, as President, and the International Union's General Executive Board, as delegated and granted to them by the International Union's Constitution."

The same claim—invalid, it must be emphasized—petitioners make (Pet. p. 17) as to the Appellate Courts below that they were holding that "a union allegedly under Communist influence could have its contracts violated with impunity" should, therefore, have been made to the Trial Court, as the above quoted finding makes clear. Additionally, during a colloquy on the ruling on an objection during the very early stages of the trial, this occurred [Rep. Tr. p. 114]:

"The Court: Well, that is what I am more interested in: that that was the actuating motive of the employees in what they did in that regard?

Mr. Rissman: That is right, your Honor.

The Court: The belief that Mr. Brown and the group in control of 576 were Communists."

[Rep. Tr. p. 117]:

"The Court: . . . It would seem that we have a legal problem as to the effect upon 576, and when I speak of that I am speaking of it as a part of CIO, of a large portion of its membership leaving the organization. We also have the effect of that action upon the rights of the International, particu-

larly as to its rights to create a new union of simi lar character. Now, to that extent it would appea immaterial as to what the reasons of the individua members may have been, but it may become materia as to what the belief of the International was i regard to those that remained in 576—let's call them the Brown adherents—and as to whether that belief was well founded. Specifically, for example, if the International believed and was justified in believing that the Brown adherents were proceeding and would proceed in violation of the policies of CIO, particularly in regard to following the Communist Party line. . . ."

Later, this took place [Rep. Tr. p. 257]:

"The Court: I understand your position. I have yet to be convinced that the general executive board did not have the right to take whatever steps were reasonably necessary to protect the members of the local, to protect the International, and perhaps to protect the United States of America."

After which petitioners' counsel said [Rep. Tr. pp. 258-259]:

"I want at this time, if your Honor please, to make a motion for a mistrial based upon your Honor's last remark, upon the grounds that it indicates on the part of the Court a bias and prejudice against the defendants and cross-complainants with respect to a matter which is not even an issue in the case, there being no contention that these steps were taken to protect the interests of the United States of America, and there being not one word of evidence in the record here to the effect that anything was done in order to protect the interests of the United States of America. It seems to me, your Honor, in all fairness to these defendants and cross-complainants,

> that a judge who has formed the opinion that this is probably an issue in the case and that there is probably a right to act in order to protect something which it isn't even asserted is involved in the case and which is based, so far as this case is concerned, simply upon the hurling of charges with respect to the name 'Communist'—there is not one word of evidence in this record that they had done a single thing that they didn't have a perfect right to do as American citizens, as a trade union, as an organization, and I think under those circumstances your Honor's remark indicates a state of mind under which it is impossible for your Honor to render a fair judgment in this case, and I therefor make this motion for a mistrial."

In denying this motion for mistrial, the Trial Court said, *inter alia* [R. p. 260]:

> ". . . so far it is quite clear that the plaintiffs contend that the defendants were following, as the witnesses have stated, the Communistic line. . . ."

Accordingly, petitioners cannot claim that the alleged federal question which they now interject into the case was not present at the Trial Court level. Petitioners' view of the case then was, properly, that only state contract law was involved. It is interesting, in view of the record before the Trial Court, including its Finding No. 19, that petitioners now find no less than *seven* federal questions (Pet. pp. 3-5) whereas before the Trial Court, including at the time of the motion for new trial, to be mentioned below, they found none.

Petitioners filed, in the Trial Court, a notice of motion for new trial [Clk. Tr. pp. 87-88], and argued it. [Clk. Tr. p. 89.] Despite the fact that the elements of

the case which petitioners now assert present a federal question were, as seen, likewise in the case at that time, they did not then, and they did not in their briefs on appeal either raise or faintly suggest that any federal question was in the case.

Accordingly, petitioners' claim that the alleged federal questions did not appear in the case until the decision of the District Court of Appeal, is quite incorrect.

For salutory reasons this Court consistently holds that the federal claim must be asserted at the first opportunity. (*Michel v. Louisiana*, ... U. S. ....., 24 Law Week 4027, 4029.) This is especially true where, by state procedure, federal constitutional questions must be raised at the Trial Court level in order to be considered by the Appellate Courts. (*Hulbert v. Chicago*, 202 U. S. 275; *Brown v. Massachusetts*, 144 U. S. 573, 580; *Edelman v. California*, 344 U. S. 357.)

It will be noted that the District Court of Appeal denied a rehearing without opinion as did the California Supreme Court deny a hearing. Where this is the case, in the light of state law that a question to be considered on appeal must be raised in the Trial Court, this Court will decline to exercise jurisdiction. (*Mutual Life Ins. Co. v. McGrew*, 188 U. S. 291, 309.) In such a case, this Court assumes, there being no showing to the contrary (*cf. Charleston Federal Savings & Loan Ass'n v. Alderson*, 324 U. S. 182, 186) that the silence is due to the state procedural deficiency. (*Bailey v. Anderson*, 326 U. S. 203, 206-207.)

The following passage from Stern & Gressman's *Supreme Court Practice* (B. N. A. 1954), page 86, is precisely in point here:

> ". . . where the federal constitutional issue was not raised in the trial court, as required by state law, but was raised for the first time in a petition for rehearing addressed to the state intermediate court, the highest state court's action in refusing without opinion to hear the case precludes review on certiorari by the Supreme Court, *Stembridge v. Georgia*, 343 U. S. 541, 547. Such refusal by the highest court *might* have been based upon the adequate state ground that the constitutional issue was not raised in the trial court, as required. And the Supreme Court feels that it is without jurisdiction 'when the question of the existence of an adequate state ground is debatable." 343 U. S. at 547-8." (Italics in original.)

I.

California Procedure Requires the Raising of Federal Constitutional Questions in the Trial Court.

It goes without saying, of course, that state procedure which requires the raising of federal constitutional questions at the trial level is valid and will be given effect by this Court. (*Williams v. Georgia*, 349 U. S. 375, 383; *Brown v. Allen*, 344 U. S. 443, 486; *Michel v. Louisiana*, ... U. S. ....., 24 Law Week 4027, 4028.)

In California, questions not raised in a lower court will not be considered on appeal. (*MacKenzie v. Angle*, 82 Cal. App. 2d 254, 186 P. 2d 30; *Moran v. Bromley*, 112 Cal. App. 2d 520, 246 P. 2d 1001; *Imperial Valley Land Co. v. Globe Grain & Milling Co.*, 187 Cal. 352,

202 Pac. 129; *Douglas v. Southern Pac. Co.*, 203 Cal. 390, 264 Pac. 237; *Raphael's Estate*, 115 Cal. App. 2d 525, 252 P. 2d 979; *H. Moffat Co. v. Rosasco*, 119 Cal. App. 2d 432, 260 P. 2d 126.)

In *Imperial Valley Land Co. v. Globe Grain & Milling Co.*, 187 Cal. 352, 359, the California Supreme Court said:

> "This question, which the appellant now seeks to have us determine, was not raised in the lower court and cannot be determined upon this appeal."

In 3 Cal. Jur. 2d, Appeal and Error, page 604, Section 140, the rule is thus put:

> "It is a general rule of appellate review, early established and long adhered to, that questions not raised in the trial court will not be considered on appeal. . . . The rule is founded upon considerations of practical necessity in the orderly administration of the law and of fairness to the court and the opposite party, and upon the principles underlying the doctrines of waiver and estoppel. . . ."

The rule applies to constitutional questions. (*Hershey v. Reclamation District No. 108*, 200 Cal. 550, 254 Pac. 542; *Estate of Crane*, 73 Cal. App. 2d 93, 165 P. 2d 940.)

In the *Hershey* case, the California Supreme Court (200 Cal. at 564) quoted with approval and followed this rule from 12 C. J. 785:

> "It is a general rule applicable in civil cases that a constitutional question must be raised at the earliest opportunity or it will be considered as waived."

This was followed and quoted with approval in *Estate of Crane*, 73 Cal. App. 2d 93, 101, and is stated as the

California law in 11 Cal. Jur. 2d, Constitutional Law, page 404, Section 73.

Accordingly, the alleged federal questions, not having been timely raised below, the jurisdiction of this Court cannot be invoked.

B.

There Are No Federal Questions in This Case.

The belated assertion by petitioners that the case presents federal questions for review of this Court is incorrect on the merits.

The mainstay of petitioners' petition is the order granting certiorari by this Court in *Black v. Cutter Laboratories,* 43 Cal. 2d 788, 278 P. 2d 905 (No. 92, Oct. Term, 1955, this Court), an order which respondents applaud and with which they agree. Petitioners, skillfully, attempt to show a parallel between the two cases. But such a parallel is simply not present, as will be demonstrated on the merits as well as by the totally different views accorded the two cases both below and in this Court.

It is significant that the opinion of the Court below out of which petitioners now attempt to glean a federal question, cites not a single federal case. This is to be contrasted with the opinion in the *Cutter Laboratories* case which is replete with reliance upon decisions of this Court and federal statutes. It would seem that if there were a federal question in the case, at least somewhere along the line, some reference to federal law, constitutional or otherwise, would have been made. On the contrary, the decision of the Court below is based solely, and solidly, on state contractual law.

Moreover, in the *Cutter Laboratories* case, three of the seven justices of the California Supreme Court dissented. (43 Cal. 2d 809-814.) Not only has this Court said that the California Supreme Court "has not been insensitive to" claims "not unrelated to those now urged" (*Parker v. County of Los Angeles,* 338 U. S. 327, 332), but not one of the three dissenting justices in the *Cutter* case saw any occasion to even vote for a hearing. (Pet. Appx. C.)[3] It is to be noted that petitioners in their Petition for Hearing in the California Supreme Court (pp. 48 and 49) argued that the opinion of the District Court of Appeal extended the California Supreme Court's ruling in the *Cutter* case. Despite this, as noted, not one of the dissenting justices voted for a hearing.[4]

Furthermore, it will be noted that the Congress of Industrial Organizations, to which respondent union, the International, is affiliated, through its General Counsel, filed a brief *amicus curiae* in the *Cutter Laboratories* case in support of the petitioning union there, despite the fact that the union involved in that case was one which had been expelled from the CIO. No such questions found in the *Cutter* case are found by the CIO here. Not only has the CIO not filed a brief *amicus* here, but, as seen, its General Counsel is one of the attorneys for respondents here. Had the instant case appeared to present

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[3]Under California procedure, where the California Supreme Court denies a hearing, the votes of those justices voting for a hearing are recorded. See *Steiner v. Darby,* 88 Cal. App. 2d 481 at 498; *Pasadena Investment Co. v. Peerless Casualty Co.,* 132 Cal. App. 2d 328 at 331; *Bayer v. Otis,* 133 Cal. App. 2d 439 at 446.

[4]Not only (footnote 3, *supra*), are the votes of the justices who vote for a hearing recorded, but on closely divided questions even opinions are at times written by justices who dissent from the denial of a hearing. See *People v. Rochin,* 101 Cal. App. 2d 140, 143, 149; *Keiper v. Northwestern Pacific Railway Co.,* 45 A. C. 149.

issues akin to those in *Cutter*, the CIO would have taken the same position it took in the *Cutter* case, even against a position of one of its constituent unions. (*Cf. Syres v. Oil Workers Intl. Union, Local No. 23*, 223 F. 2d 739 (C. A. 5, 1955), cert. granted and revd. No. 390, Oct. Term, this Court, ... U. S. ....., 24 Law Week 3137.)

The suggestion that there are federal questions in this case is a spurious one. The case involves solely questions of state contract law, was decided on that basis and the jurisdiction of this Court is improperly invoked because the judgment below was based upon a non-federal ground, sufficient and adequate to sustain it.

This case involves the simple question as to whether a group of individual members of a local union who attempt to secede from the parent body, the International Union, in violation of the constitution of the International, may take with it (the seceding group of individuals) the name, funds, properties and other assets of the original local.

II.

The Decision of the Court Below on the Principal Issue, To-wit: Whether a Group of Members May Secede From a Parent Body and Take With It the Name, Funds, Property and Assets, Is Consistent With the Established Law of California.

The law in California is clear that the determination of this question rests upon the relationship created between the parties by their agreement, to-wit: the Constitution, the Charter and the By-laws. (*Scott v. Donahue*, 93 Cal. App. 126; *Radio Station KFH Company v. Musicians Association*, 169 Kan. 596, 608, 220 P. 2d 199, 205; *Killeen v. Hotel and Restaurant Employees*, 84 Cal. App. 2d 87; *De Mille v. American Federation, etc.*, 31

Cal. 2d 139.) The local in our case is a subordinate creature under the control and domination of the International. The local union exists subject to the will of the International, its charter having been granted and subject to revocation by the International. Especially, where, as here, the members are employed by several employers, the local needs the strong dominance and support of the parent body. As one Court has said:

> "The locals have some degree of administrative autonomy, but they are closely supervised. . . . Most important of all is the fact that the locals' own constitutions and by-laws are not effective until approved by the International."
>
> *Fitzgerald v. Abramson,* 89 Fed. Supp. 504 (S. D. N. Y.)

An examination of the International Constitution shows that the International is an organization of individual members, not of locals. The International exists for the benefit of its members, and not for the enhancement of any local or its business agent. The objectives are to improve the status of furniture workers, as individuals.

Further examination reevals that the International "holds a tight rein over the locals and they have no being separate and apart from the International." (*Brown v. Hook,* 79 Cal. App. 2d 781, at 787.) The International is given broad control over funds and property of the locals. No local can solicit other locals for funds except with the International's approval, and, if approval is granted, the funds must first be sent to the International, and by it sent to the soliciting local. A member of one local has a right to transfer to another local, upon changing employment. The very contract between the International and the local can be changed or amended

by a vote at the International Convention, or a referendum to the members of the International. The International has set up intermediate Regions and District Councils, with compulsory membership for each local, further strengthening the International's control over the local. Disputes among subordinate bodies are settled by the International, and all laws are enforceable by the International President. The President supervises the contracts in all districts and his interpretation of the Constitution is binding, subject only to review by the International Executive Board or the International Convention. The International Constitution outlines complete control over funds and properties of any movement of secession or disaffiliation, to the end that the funds and property will not go with or be used by the seceding or disaffiliating group.

From the foregoing, and other clauses of the constitution, we see that there exists a close integration between the International and its locals. The integration, and the dependence of the local upon the International, is practically identical with the situation considered by the Court in the case of *Brown v. Hook, supra.*

In recent years there have been many cases[5] which have considered this question.

In *Sessler v. Union Local 901,* 87 Fed. Supp. 447, (U. S., N. D. Ind.), the Court found in favor of the International, and said:

> ". . . a majority of the members of an unincorporated association can direct the use of funds

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[5]For a study of some of these cases, reference is made to the article of George Rose, *"The Relationship of the Local Union to the International Organization,"* November, 1952, Virginia Law Review, reprinted in 4 Labor Law Journal, 334 (May, 1953).

> of the association with the scope of the association's declared purposes, but a majority cannot, against the will of a minority, or even against the will of a single member, receive such funds for uses other than those permitted by the Constitution and the by-laws of the association."

In *Federation of Insurance Agents v. United Office and Professional Workers* (R. I. Sup. Ct.), 74 A. 2d 446, 18 Lab. Cas. No. 65862, the Local sued the International to restrain it from taking over the property of the Local. The Court concluded that the Local was subordinate to the Union Executive Board, that it was a creature of the executive Board. For example, the Constitution and the by-laws provided that new members must abide by the Constitution of the Union. There could be no increase in Local dues without the approval of the Union; a member of the Local could appeal to the International, the funds of the Local under the Constitution are a trust for the benefit of the Local to be used in accordance with the Constitution of the Union. From this it was construed by the Court that there was no real autonomy but that the Local was a creature of the International, and denied the requested injunction.

In another case, *Morrison v. Majestic Laundry System*, 10 N. Y. S. 2d 791, a local of the Amalgamated Clothing Workers of America, CIO, attempted to disaffiliate and join the Teamsters, AFL. An analysis of the Union Constitution by the Court showed that

(a) the seven-member continuing clause was present;

(b) that a charter was only given after approval;

(c) the local by-laws could not conflict with the Amalgamated Constitution;

(d) a worker could transfer from one local to another local;

(e) that in event of withdrawal by the Local, the books, records and funds and property shall be delivered to the General Secretary of the International.

The Court said that not even a majority of a local of a union may in violation of its charter provisions and in violation of the Constitution of its parent union secede as a local and carry with it all of the Local Union's property where there still remain the requisite members loyal to the parent union still willing to function as such. The Court went on to say that individuals may leave the Amalgamated and join the Teamsters but the Amalgamated local still existed.

In *Schnitzler v. Scida*, U. S. D. C., E. D. N. Y., 19 Lab. Cas. No. 66034, 27 L. R. R M 2025, a local of the AFL Bakers' Union wished to join CIO Retail, Wholesale & Department Store Union. AFL began a proceeding to enjoin the defendants from leaving the AFL and going to the CIO and taking any property with them. The Court referred to the seven-men clause in the Constitution and held that there could be no legal disaffiliation under those circumstances.

To the same effect is the case of *Feller v. Egelhofer*, decided October 15, 1953, N. Y. S. Ct. 33 L. R. R. M. 2139, and *Baker v. Hazel Park Raceway*, decided March 1, 1954, Mich. Cir. Ct. 34 L. R. R. M. 2080.

Those cases[6] which sustained the disaffiliation, decided the issues on the implied condition of a contrary theory, *i.e.,* the use of the term "CIO" as part of the name "UE" was so important as an element of the contract whereby persons became members of the UE (United Electrical, Radio and Machine Workers of America) that when National CIO expelled UE an implied condition of the contract was broken.

The Court of Appeals (7th Cir.) rejected this "implied condition" theory in the *Sessler*[7] case, 25 L. R. R. M. 2599, in which the Court found (1) that although the local may have enjoyed an autonomous and independent status prior to its affiliation with the UE, and the latter's affiliation with CIO, after affiliation it became subordinated to UE and could not disaffiliate and retain the property; and (2) there was no evidence upon which the Court could find either an express or implied condition that membership in UE is conditioned upon the constitution of the UE as a member and an affiliate of the CIO.

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[6]*Local 1140 I.U.E. v. U.E.*, 232 Minn. 217; *Clark v. Fitzgerald*, 93 N. Y. S. 2d 768; *Duris v. Iozzi*, 6 N. Y. Supp. 530; and *Bozeman v. Fitzmaurice*, 107 N. E. 2d 627.

[7]Certiorari denied, 341 U. S. 940 (1951).

III.

The International Had a Right to Issue a Charter to Local 1010, Since the Charter to Local 576 Granted No "Exclusive" Jurisdiction. The International Had a Duty to Protect Its Membership.

Petitioner argues that the issuance of a charter to Local 1010 constituted a breach of the agreement between the International and Local 576, since this would result in a diminution of the "jurisdiction" assigned to Local 576.

Under the Constitution and the charter no exclusive right was given or could have been given to Local 576. Any seven persons working at the trade could make application for and be granted a charter as a local union. The sole discretion as to when, how or under what circumstances a charter shall be issued is in the International President subject, in some cases, to the approval of the International's General Executive Board. There were no other limitations placed upon the International president in the exercise of his judgment, either in the International Constitution, the local by-laws or the Charter itself.

Since the Constitution did not authorize the President to issue an "exclusive" charter to Local 576, it cannot be inferred that he had an implied power to do so. Inferred or implied powers of a labor union must rest upon some provision of the Constitution, since it embodies its whole plan of existence. (*Amalgamated Clothing Workers of America v. Kiser*, 174 Va. 229, 125 A. L. R. 1251.) If the International had intended to issue exclusive grants,

the Constitution would have expressly authorized it to do so.

The International President is charged with the responsibility of interpreting the Constitution. His decision in this respect is final and binding. After determining that the issuance of a charter was necessary and proper, and in an exercise of excessive, if not superfluous caution (since, under Article XLIII such a charter may cause a division of an existing local) he solicited and received the approval of the General Executive Board.

In *Harrison v. Railway and Steamship Clerks,* 34 L. R. R. M. 2415 (June 23, 1954), the Kentucky Court of Appeals had been asked to reverse a labor union's expulsion of a member who had violated union policy, on the ground that there had been a misinterpretation of the Union's Constitution. The Court said:

> "Apparently this was the construction adopted by appellees' (union's) authorized officers, and as pointed out in *Norfolk v. W. Ry. Co. v. Harris,* 260 Ky. 132, 84 S. W. 2d 69, the Courts should hesitate to upset a labor organization's interpretation of its own Constitution and by-laws." (See also, *Naylor v. Hawkins,* N. J. Sup. Ct., Chanc. Div. (Oct. 16, 1953), 33 L. R. R. M. 2071; and *DeMille v. AFRA, supra.*)

The International had the right to establish Local 1010, even in the face of opposition or objections of Local 576 that the issuance of such a charter would deprive Local 576 of its "jurisdiction." In a dispute as to which of two locals should have jurisdiction, the courts uniformly maintain that the determination made by the International is binding. (*Green v. Obergfell,* 121 F. 2d 46; *Lawsen v. Hewell,* 118 Cal. 613,; and *Lousford v. Burton,* Ore. Sup. Ct. (Feb. 24, 1954), 34 L. R. R. M. 2100.)

In the *Lonsford* case the International union amended the jurisdiction of a local union, without the knowledge or consent of the local, and plaintiffs sought to restrain the international. The plaintiffs (local members) alleged:

> "It is further alleged that the defendants (Inter national) have deprived Local 401 of all its jurisdiction which was given to it under its charter, and that such jurisdiction has been transferred to Local 72 of Portland, Oregon."

The decision of the Court, on the question of the International's authority to amend, said:

> ". . . Upon the merits, a major issue relates to the legal power of the International to 'amend' the charter of Local 401 in respect to jurisdiction. This is a clear question of law under the constitution of the International. That constitution provides:
>
> " 'The International President shall hear and decide all questions of constitutional law submitted to him by any District, State or Subordinate Lodge, and all decisions shall be binding until finally passed on by the Executive Council, or the International Brotherhood Convention.'
>
> "There is substantial evidence in the record indicating a practical construction of the constitutional provision authorizing such changes in jurisdiction under the power to amend."

In California the law is the same. In *DeMille v. AFRA, supra,* that Court said:

> "The practical and reasonable construction of the Constitution and by-laws of a voluntary organization by its governing body is binding on the membership and will be recognized by the Courts."

The common objectives of both the local and the International was to enter into collective bargaining agreements with employers "and to seek through such agreements to establish maximum job and union security for *members* of the United Furniture Workers of America." These objectives could best be obtained by the issuance of the Charter to Local 1010. There was no frustration of the desired object of the contract. (*Brown v. Oshiro,* 68 Cal. App. 2d 393, 397; *Edwards v. Leopoldi,* N. J. Sup. Ct., App. Div.; 30 L. R. R. M. 2425, 2435 (1952).)

The International was obligated to issue the new charter to its members who desired to be free of the leadership of Local 576. It was President Pizer's duty to protect the International, its members and membership. (*Naylor v. Hawkins, supra; Lawsen v. Hewell, supra,* and *DeMille v. AFRA, supra.*)

Conclusion.

This proceeding raises no questions of federal law and it is respectfully submitted that the Petition for Hearing by the Supreme Court should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1955

No. 510.

GUS O. BROWN and OSCAR CASTRO, individually and as Business Agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; ERNEST MARSH and HENRY B. HOLMES, individually and as organizers of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association; KRUGER CLARK, LAWRENCE TURNER, JACOB LEHMAN, SOL STEINHARD, DAN QUIJARDA, PETER BEEKES, LOUISA TOCCI, MARK ROBINSON, JOE N. OLIVER, and ROBERT BURRI, individually and as officers and agents of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association, FURNITURE WORKERS, UPHOLSTERERS AND WOOD WORKERS UNION, Local 576 (INDEPENDENT), a voluntary unincorporated association; LOUIS COTA, JR., individually and as President thereof; GUILLERMO NAVARROS, individually and as Financial Secretary thereof; HENRY MOBLEY, individually and as Treasurer thereof,

Petitioners,

vs.

MORRIS PIZER, individually and as International President, and WILLIAM GILBERT, individually and as International Representative of and Members and representatives of the members of the United Furniture Workers of America, a voluntary unincorporated association, ALEX O. RIVERA, FRANK JONES, GEORGE B. TRIPP, FRANCES CARR, CHRIS LAGUTARIS, and ETHEL KIGGINS, individually and as members of and representatives of the members of Local Union 576, United Furniture Workers of America, CIO, a voluntary unincorporated association,

Respondents.

PETITIONERS' REPLY BRIEF.

1. By the expedient of ignoring the entire foundation of the Petition herein, respondents argue that there is no federal question in this case and, if there is, it should have been but was not raised in the trial court.

The basis for the relief requested by the International was the forfeiture clause in its constitution [Clk. R. 1, 10, 24-5]. In their answer and cross-complaint, the peti-

tioners pleaded facts showing a deliberate attempt on the part of the International to destroy 576 CIO, constituting a breach of the contract with the local by reason of which the International could not enforce against the local the forfeiture clause in the same contract [Clk. R. 42, 46, 50-53].

The contract between the parties was crystal clear with respect to the obligation of the International to assist the local and not to take steps to destroy it. On this issue there was no dispute. If the trial court had made a finding that it was true that the International had attempted to destroy the local but that the local was not entitled to have its contract rights protected because it allegedly followed the Communist line, then there would have been presented at that point the issues to which the decision of the Court of Appeal gave birth. But the trial court merely found without opinion that these critical allegations were untrue. So at that point, there were no constitutitional issues apparent.

Petitioners' contention on appeal was that the finding that the International had not sought to ruin the local was contrary to the uncontradicted evidence. Respondents in their brief and argument in the Court of Appeal did not challenge the accuracy of petitioners' statement setting forth, as uncontradicted, facts supported by the International's own records conclusively establishing that the International attempted to destroy the local. Nor did they contend that the International had a right to destroy the local because of its alleged following of the Communist Party line. Accordingly, the matter was submitted to the Court of Appeal with petitioners' contention regarding the state of the record on this point unchallenged and unanswered.

While the case was pending in the Court of Appeal, the State Supreme Court decided *Black v. Cutter Laboratories*, 43 Cal. 2d 788. In its decision in this case the Appellate Court declared that the International had a right to take the action it did against the local, citing the *Black* case (App. B to Pet. p. 12). This was said in the face of the undenied fact that the record established without contradiction that the International had embarked upon a campaign to destroy the local. Thus there entered the case for the first time the federal constitutional issues arising out of a contention or holding that an International is free to violate its contract obligations to a local upon a charge that the local is following the Communist Party line. These federal constitutional issues were then promptly set forth in a Petition for Rehearing (pp. 9-12).

In the Petition for Rehearing by the Supreme Court of the State, petitioners again made the statement that the undisputed evidence established the International's (pp. 10-22, 36) endeavor to destroy the local, which statement once more went unchallenged. Of course, the federal Constitutional Points were also urged (pp. 48-52). So, in denying a hearing, the Supreme Court of California could have been acting neither on the assumption that the Court of Appeal had held that the trial court's findings of fact on this score were supported by the evidence nor that the respondents so contended. The California Supreme Court must, therefore, have followed its decision in *Black*. For it allowed to stand the holding of the Court of Appeal that the International had a right to breach its contract with a local which allegedly followed the Communist Party line and thereafter to enforce a forfeiture clause in the same contract against the same local.

The petitioners argue below that in addition to the breach of the contract by the undisputed attempt to destroy the union, the International had also breached the contract by the issuance of a new charter to another local. Whether or not the International as a matter of discretion had the right to issue a new charter in an area where an existing local was alleged to be following the Communist Party line, presented a question of contract interpretation—a purely state question and the court's finding that the issuance of the charter was justified for the reasons stated therefore involved no federal constitutional problems. That issue, which respondents now labor, is not before this Court. Respondents are merely using the issue as a gloss for obscruing and avoiding the real issue here upon which the judgment below is founded—the denial of the right of petitioners to urge an *undisputed* prior breach of the contract by the International rendering the forfeiture clause unenforcible, all because of the alleged "Communist influence" in the local union.

Even though, as the Courts below held, there was no breach of the contract between the parties by reason of the issuance of the new charter because the contract properly construed permitted such issuance, nevertheless the undisputed evidence establishes a breach by reason of the attempted destruction of the local. If there was a breach in the latter regard, it is immaterial that there was none in the former, as far as the constitutional questions in this petition are concerned. For they relate to the right with impunity to breach a contract on the grounds that a local is allegedly following the Communist Party line.

2. In the light of the foregoing, respondeats' attempt to question the jurisdiction of this Court to grant the

petition for writ of certiorari is without basis. Nothing in California procedure nor in this Court's procedure places any impediment to the resolution of the substantial federal questions here presented.

> "But there are situations where raising the federal questions for the first time in the petition for rehearing is timely. Thus if the question is created by an unexpected decision of the highest state court, giving the litigant no prior opportunity to anticipate or assert the particular federal question, the petition for rehearing constitutes his first and probably his only chance to present the matter to that court. Accordingly the federal question is timely raised and will support the exercise of Supreme Court jurisdiction. This is true even though the petition for rehearing is summarily denied without reference to the federal question."
>
> Stern and Grossman, *Supreme Court Practice* (1954), p. 89.

See, *Brinkerhoff-Faris Trust & Sav. Co. v. Hill,* 281 U. S. 673; *Missouri ex rel. Missouri Ins. Co. v. Gehner,* 281 U. S. 313; *Saunders v. Shaw,* 244 U. S. 317; *Cole v. Arkansas,* 333 U. S. 196.

Respondents' citations are not apposite (Resp. Br. pp. 23-4). They deal with different situations which are not relevant here. One line of cases, like *Michael v. Louisiana,* ..... U. S. ..... (24 L. W. 4027), holds that a failure to comply with a specific state requirement for timely objection to the constitution of a grand jury, will preclude the right to raise the issue thereafter. Another line of cases holds that objections to the patent constitutionality of a statute should be made in the lower court and not for the first time on appeal. (*Edelman v. California,* 344 U. S. 357.) The third line of state cases holds

that a point not raised in the trial court will not be considered on appeal, just as this Court will not consider a question not theretofore presented. None of these cases are at all related to a situation in which the violation of federal rights first occurred in the appellate court following the announcement of a new state policy non-existent at the time of the trial.

Moreover, California itself recognizes no such stringent rule as respondents offer. Recognizing that the waiver of constitutional rights is not lightly to be implied, the courts have allowed claims of unconstitutional deprivation though not raised in the lower courts. "Like most general principles, those pertaining to the waiver of the right to challenge the constitutionality of a statute are subject to certain qualifications." (11 Cal. Jur. 2d, *Constitutional Law,* Sec. 73, p. 406. See *Echlin v. Superior Court,* 13 Cal. 2d 368, 90 P. 2d 63; *Mojave River Inv. Dist. v. Superior Court,* 202 Cal. 717, 262 Pac. 724; *Claremont Imp. Club v. Buckingham,* 89 Cal. App. 2d 32, 200 P. 2d 47.)

On the jurisdictional issue, what the respondents overlook is the following: (1) that the constitutional questions raised here could not have been anticipated in the trial court, since *Black v. Cutter Laboratories* was decided while the case was pending in the appellate court where the new state policy was made the basis for the affirmance of the trial court; (2) that this Court may always reexamine the undisputed evidence to determine whether federal rights have been denied;[1] (3) that the failure of

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[1]The holding of the Court of Appeal that the International had a right to do what it did plus the undisputed evidence of the International's breach of its contract with the local raise the constitutional problems urged in the Petition.

the state courts to apply undisputed state law to the undisputed evidence, which palpably established that respondents were without right to forfeit petitioners' property, was itself a denial of due process of law; and (4) that judicial sanction of a forfeiture of an associations' property solely because of alleged "Communist influence" raises serious federal questions which this Court is empowered to review. (See, Pet. p. 18, n. 6.)

3. In their reply to the Petition, as at all stage of the appeal herein, respondents do not challenge the showing made in the Petition that the uncontradicted evidence proved that after the International had embarked upon a plan to destroy the local and the International had failed and refused to either cease its attacks or to reply to the local's protests and requests for information as to its rights, the local withdrew from the International in self-defense. Nor do they question the validity of the Constitutional arguments as applied to these facts and the issues flowing from the holding that the International had the right to act as it did because the local allegedly followed the Communist Party line. They raise only questions of jurisdiction, which have been dealt with above, and arguments directed to issues not presented by the Petition.

In this connection, respondents give three reasons why no federal questions are raised. First, they note that the Court of Appeals did not cite any federal cases in its opinion. At best, this proves no more than that the federal questions raised were not considered by the State Court. More important, however, the Court of Appeal cites the *Black* case which, as respondents themselves note, "is replete with reliance upon decision of this Court and federal statutes" (Resp. Br. p. 25). Thus the Court of

Appeal indicated its reliance upon legal principles dependent upon decisions of this Court and federal statutes.

Second, it is noted that none of the Supreme Court Justices who dissented in *Black* dissented from the refusal to grant a hearing in this case. This establishes nothing more than that the Justices felt themselves bound by *Black,* even though they had dissented therefrom.

Third, counsel who just entered this case point to his support of the *Black* petition for certiorari. Counsel's avowal of his own consistency is hardly a reason for denying certiorari in this case.

These three tangental arguments are substituted for any contention either that petitioners have inaccurately summarized the record with respect to the International's attack upon the local or that the issues set forth in the petition as arising from the disposal of these facts by the Court of Appeal do not involve substantial federal questions. Instead respondents argue that the Court below correctly declared the principle of law that an International may pursuant to its contract with a local forfeit the property of the local in the event of its withdrawal from the International. This argument begs the issue in this case.

As is conceded in respondents' reply brief herein, the right to the forfeiture arises out of contract (Resp. Br. p. 27). That the International Constitution and the local's by-laws constituted such a contract here was alleged [Clk. R. 1, 9-10] and admitted [Clk. R. 42, 46] in the pleadings and accordingly found by the trial court [Clk. R. 74]. That this contract contemplates that a local may withdraw but that in event of a withdrawal it must

forfeit its property is clear.[2] The only question is whether the forfeiture clause may be enforced where the International has itself destroyed the very essence of its agreement with the local and thereby precipitated the disaffiliation. The state law that a forfeiture clause cannot ordinarily be enforced under these circumstances (Pet. p. 19) has not been questioned by respondents. Nor did the Court of Appeal hold that an International generally may breach its contract with a local, and thereafter declare a forfeiture of the local's property pursuant to that contract. What it did hold was that as International possesses these rights when the local involved is alleged to be Communist dominated. It is out of this situation that the serious constitutional issues set forth in the Petition originate.[3]

The Petition for Certiorari should be granted.

Respectfully submitted,

BEN MARGOLIS,

Attorney for Petitioners.

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[2]The constitution of the International treats the Local as a separate entity. Article XXXIX recognizes that under certain circumstances the Local may secede from the International. [Pltf. Ex. 1, p. 38.] Article XXXVIII provides for the suspension of a Local for non-payment of per capita tax, with the Local continuing in existence during the period of suspension, but denied "any benefits, privileges or protection of the International Union." [Pltf. Ex. 1, pp. 35-36.] If the Local were not a separate entity, it could not secede and it could not continue to exist when suspended from the International.

[3]The section of the reply brief dealing with the right of the International to issue a charter requires no answer because the question of that right presents only questions of contract construction. However, the right of an International to seek to wipe out a local, which it is bound by contract to protect, and still enforce that same contract, all on the ground that the local is alleged to be Communist dominated, is another matter—the one which the Petition presents for this Court's consideration.